Jurisdictional Statement

82-65

Office - Supreme Court, U.S.
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ALEXANDER L. STEVAS,
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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

MARGARET R. BROWN, JUDY KNIGHT, JANE MAXWELL, MARY SHENEFIELD, MIRIAM S. STRAUGHAN, SANDRA H. SHUPTRINE, OLIVE J. WHITE,

Appellants,

v.

THYRA THOMSON, as Secretary of the State of Wyoming, ED HERSCHLER, THRYA THOMSON, SHIRLEY W. TTLER and JAMES B. GRIFFITH, as members of the State Canvassing Board, and ED HERSCHLER, as Governor of the State of Wyoming,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT, FOR THE DISTRICT OF WYOMING

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

QUESTIONS PRESENTED

1. Has there been a prima facie violation of the equal protection clause of the United States Constitution?

A. Are Wyoming Statutes § 28-2-109(iii) and (c) (xiv) and Article 3, Section 3 of the Wyoming State Constitution unconstitutional?

B. Has there been an improper, illegal dilution of the voting privileges of the Appellants and other citizens and electors of Wyoming in violation of the 14th Amendment, Constitution and Statutes of the United States of America?

2. Are there legitimate considerations incident to the effectuation of a rational state policy justifying violation of the Amendments, Constitution and Statutes of the United States of America and the State of Wyoming?

PARTIES TO THE PROCEEDING

The Appellee-Intervenors, all residents of Niobrara County, Wyoming, have not been set forth in the caption of this case and are as follows: James L. Thompson, Gerald D. Bardo, Russell Thompson, Kenneth A. Gropp, Richard G. Pfister, Peter M. Hansen, Gertrude Chamberlain, Betty Percival, Mary L. Burke, Board of County Commissioners of the County of Niobrara, Kenneth R. Freeman, as a County Commissioner of the County of Niobrara and in his individual capacity, and Louis L. Landkamer as a County Commissioner of the County of Niobrara and in his individual capacity.

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OPINIONS BELOW

The above-entitled case, *Brown v. Thomson*, is reported at 536 F. Supp. 780 (1982).

STATEMENT OF JURISDICTIONAL GROUNDS

This is a challenge to the constitutionality of the 1981 Apportionment Act of the Wyoming State Legislature which granted a representative to the Wyoming House of Representatives from Niobrara County, although that county's population would not otherwise entitle it to a representative.

Federal jurisdiction is based upon 28 U.S.C. § 1343(3) and (4). A three-judge court was convened pursuant to 28 U.S.C. § 2281.

Appellate jurisdiction of this Court is based on 28 U.S.C. § 1253.

Appeal is taken from the Order of Dismissal with Prejudice entered by the United States District Court for the District of Wyoming on April 21, 1982. The Notice of Appeal was filed on May 12, 1982 in the United States District Court for the District of Wyoming.

CONSTITUTIONAL PROVISIONS, AMENDMENTS AND STATUTES

U.S. CONST. amend. XIV, § 1 provides:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

WYO. CONST. art. 3, § 3 provides:

> "Each county shall constitute a senatorial and representative district; the senate and house of representatives shall be composed of members elected by the legal voters of the counties respectively, every two (2) years. They shall be apportioned among the said counties as nearly as may be according to the number of their inhabitants. Each county shall have at least one senator and one representative; but at no time shall the number of members of the house of representatives be less than twice nor greater than three times the number of members of the senate. The senate and house of representatives first elected in pursuance of this constitution shall consist of sixteen and thirty-three members respectively."

WYO. STATUTES § 28-2-109 provides:

(a) The ratios for the apportionment of senators and representatives are fixed as follows:

> (i) The ratio for the apportionment of senators is the smallest number of people per senator which when divided into the population in each senate district as shown by the official results of the 1980 federal decennial census with fractions rounded to the nearest whole number results in a senate with thirty (30) senators;
>
> (ii) The ratio for the apportionment of the representatives is the smallest number of people per representative which when divided into the population in each representative district as shown by the official results of the 1980 federal decennial census with fractions rounded to the nearest whole number results

in a house with sixty-three (63) representatives;

(iii) *If the number of representatives for any county is rounded to zero (0) under the formula in paragraph (a)(ii) of this section, that county shall be given one (1) representative which is in addition to the sixty-three (63) representatives provided by paragraph (a)(ii) of this section;*

(iv) If the provisions of paragraph (a)(iii) of this section are found to be unconstitutional or have an unconstitutional result, then Niobrara county shall be joined to Goshen county in a single representative district and the house of representatives shall be apportioned as provided by paragraph (a)(ii) of this section.

(b) Representation in the state senate is hereby apportioned and divided among the several senatorial districts as follows:

(i) Albany county shall have two (2) senators;

(ii) Big Horn county shall have one (1) senator;

(iii) Campbell and Johnson counties combined shall have two senators;

(iv) Carbon county shall have one (1) senator;

(v) Converse county shall have one (1) senator;

(vi) Crook and Weston counties combined shall have one (1) senator;

(vii) Fremont county shall have two senators;

(viii) Goshen and Niobrara counties combined shall have one (1) senator;

(ix) Hot Springs and Washakie counties combined shall have one (1) senator;

(x) Laramie county shall have four (4) senators;

(xi) Lincoln county shall have one (1) senator;

(xii) Natrona county shall have four (4) senators;

(xiii) Park county shall have one (1) senator;

(xiv) Platte county shall have one (1) senator;

(xv) Sheridan county shall have two (2) senators;

(xvi) Sublette and Teton counties combined shall have one (1) senator;

(xvii) Sweetwater county shall have three (3) senators; and

(xviii) Uinta county shall have one (1) senator.

(c) Representation in the state house of representatives is hereby apportioned and divided among the several representative districts as follows:

(i) Albany county shall have four (4) representatives;

(ii) Big Horn county shall have two (2) representatives;

(iii) Campbell county shall have three (3) representatives;

(iv) Carbon county shall have three (3) representatives;

(v) Converse county shall have two (2) representatives;

(vi) Crook county shall have one (1) representative;

(vii) Fremont county shall have five (5) representatives;

(viii) Goshen county shall have two (2) representatives;

(ix) Hot Springs county shall have one (1) representative;

(x) Johnson county shall have one (1) representative;

(xi) Laramie county shall have nine (9) representatives;

(xii) Lincoln county shall have two (2) representatives;

(xiii) Natrona county shall have nine (9) representatives;

(xiv) Niobrara county shall have one (1) representative;

(xv) Park county shall have three (3) representatives;

(xvi) Platte county shall have two (2) representatives;

(xvii) Sheridan county shall have three (3) representatives;

(xviii) Sublette county shall have one (1) representative;

(xix) Sweetwater county shall have five (5) representatives;

(xx) Teton county shall have one (1) representative;

(xxi) Uinta county shall have two (2) representatives;

(xxii) Washakie county shall have one representative; and

(xxiii) Weston county shall have one (1) representative. (Laws 1981, ch. 7, § 1.)

ESSENTIAL FACTUAL CONSIDERATIONS

AND

THE LOWER COURT'S DECISION

The 1971 Wyoming Apportionment Act provided for a 62 member House of Representatives. Under that Act, Goshen County received two representatives and Niobrara County received one representative.

The results of the 1980 dicennial census for the State of Wyoming indicated a population growth of approximately 24% from 332,416 to 469,557. Subsequently the legislature began working on a new apportionment scheme to reflect the change in population among the State's voting districts.

The original 1981 apportionment bill provided for a 63 member House of Representatives. Niobrara County with a population of 2,924 would be combined with Goshen County with a population of 12,040 persons and the two counties would have shared two representatives. Each member of the House was to represent about 7,500 persons.

The 1981 Wyoming Apportionment Bill was later amended to provide that the Wyoming House of Representatives would be a 64 member body, with each member now to represent approximately 7,300 residents. Goshen County retained its two representatives but the 64th member was awarded to Niobrara County with its scant population of 2,924 persons. Had the 64th representative been awarded purely on population, Sweetwater County should have received the additional representative.

The sponsor of the Apportionment Bill testified the legislature finally passed the apportionment plan after Niobrara County was given its one representative in order to give Niobrara County "its day in court." He testified the bill's grant to Niobrara County of its own representative had nothing to do with population considerations. In fact, the 1981 Apportionment Act, W. S. § 28-2-109, provides if a determination is made that the legislative grant of one representative to Niobrara

County is found to be unconstitutional or have an unconstitutional result, then Niobrara County shall be joined to Goshen County in a single representative district or, in other words, the House of Representatives shall become a 63 member body. The combination of Niobrara with Goshen would have given 14,964 residents two representatives; thus, each representative would represent 7,482 residents.

Pursuant to the 1981 Wyoming Apportionment Act the ratio for apportionment of the representatives is the smallest number of people per representative which when divided into the population in each representative district as shown by the official result of the 1980 Federal Dicennial Census, which fractions rounded to the nearest whole number, result in a House with sixty (63) representatives. Whether the legislature is a 63 member or 64 member body the results are the same: Niobrara County has less than 40% of the number of persons needed to deserve its own representative and, therefore, when rounded to the nearest whole number as the statute requires, Niobrara County alone should receive no representative. For this reason the legislature alternatively combined Niobrara with Goshen County.

The three judge district court below considered the case, reviewed the Constitution, Articles and prior Wyoming apportionment cases in upholding the 1981 scheme.

In the first Federal Wyoming Apportionment case, *Schaefer v. Thomson,* 251 F. Supp. 450 (1965), Niobrara County had a population equalling more than 50% of the number of persons needed to elect a representative and the same was true in the 1971 apportionment scheme. *Thompson v. Thomson,* 344 F. Supp. 1378 (1972).

Since that time, however, the law has been further clarified by additional case decisions. *Swann v. Adams,* 285 U.S. 440, 17 L.Ed.2d 501, 87 S. Ct. 569 (1967); *Kilgarlin v. Hill,* 386 U.S. 119, 17 L.Ed.2d 771, 87 S. Ct. 820 (1967); *Whitcomb v. Chavis,* 403 U.S. 124, 29 L.Ed.2d 363, 91 S. Ct. 1858 (1971); *Mahan v. Howell,* 410 U.S. 315, 35 L.Ed.2d 320, 93 S. Ct. 979, and (U.S.) 36 L.Ed.2d 316, 93 S. Ct. 1475 (1973); *Chapman v. Meier,*

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420 U.S. 1, 42 L.Ed.2d 766, 95 S. Ct. 751 (1975); *Connor v. Finch*, 431 U.S. 407, 52 L.Ed.2d 465, 97 S. Ct. 1828 (1976).

Through its relatively short history, apportionment law has come to adopt certain statistical measures which have been used to provide even more concrete guidelines and standards for evaluating vote dilution in apportionment cases. Although in the early 1960s there was a heavy reliance on the minimum number of persons electing a majority number of representatives as a standard of measurement, that measurement has been pushed to the wayside in favor of the more statistically accurate measurement methods of vote dilution like ratio and overall relative range.

In a 64 member Wyoming House of Representatives, the ratio is 3.25 to 1 and the overall relative range is 89% while a 63 member House of Representatives has a ratio of 2.09 to 1 and an overall range of 66%. The difference, therefore, from giving Niobrara County one representative as opposed to combining Niobrara and Goshen Counties is measureable and results in a ratio difference of 1.16 (3.25 - 2.09) and an overall relative range difference of 23% (89% - 66%). The deviation reflected by Niobrara County's combination with Goshen County alone equals and exceeds the deviation of the apportionment plans invalidated by the United States Supreme Court in previous cases. The 1981 Wyoming Senate has an overall ratio of 1.84 and an overall relative range of 64%.

Wyoming experiences a situation where a citizen from Niobrara County with a population of 2,924 persons has a vote weighted 3.2 times more heavily than a vote from a Washakie County citizen where a population of 9,496 persons also votes for only one representative.

Synthesizing the late 1960s - early 1970s case decisions, the Supreme Court has established the 10% de minimis rule for state legislative districts wherein states are not required to justify apportionment plans having an overall relative range of 10% or less. *Gaffney v. Cummings*, 412 U.S. 735, 37 L.Ed.2d 298, 93 S. Ct. 2321 (1973); *White v. Regester*, 412 U.S. 755, 37 L.Ed.2d 314, 93 S. Ct. 2332 (1973). The Court has gone

so far as to say there is no prima facie equal protection violation under the 14th Amendment of the Constitution of the United States, absent special justification, when the overall range is 9.9%; however, a prima facie violation does occur when the overall relative range is greater than 9.9%. *Connor v. Finch, supra.* If the overall range is greater than 9.9%, the greater deviation may be upheld if based upon sufficient and acceptable state policy. Thus, in *Mahan v. Howell, supra,* the Supreme Court found that preservation of political subdivision boundaries justified a 16% "limited" departure from strict population equality in state legislative districts.

Prior to the *Schaefer* suit, the 1963 Wyoming Senate had an overall ratio of 9.82 to 1 and an overall relative range of 205%. The Wyoming House of Representatives had an overall ratio of 2.59 to 1 and an overall range of 90%.

Although the apportionment of the 1963 House and Senate was attacked, the *Schaefer* court determined that the representation in the House of Representatives was not violative of the 14th Amendment to the Constitution of the United States while further recognizing that both Houses of the bicamerial state legislature must be apportioned substantially on a population basis. Additionally, the *Schaefer* Court held that portion of Section 3, Article 3 of the Wyoming Constitution which provided that each county shall constitute a senatorial district and have its own senator to be unconstitutional.

The 1963 Senate was modified as a result of the *Schaefer* Court's findings. After modification, the Wyoming Senate had an overall ratio of 2.08 to 1 and an overall range of 71%.

Although the Supreme Court summarily affirmed the *Schaefer* decision, *Harrison v. Schaefer,* 383 U.S. 269, 86 S. Ct. 929, 15 L.Ed. 2d 750 (1966), it is apparent the *Schaefer* decision could not stand in view of later Supreme Court decisions. Nonetheless, the three judge panel relied principally on *Schaefer* in justifying its decision to uphold the 64 member house apportionment plan in the State of Wyoming.

When the apportionment of Wyoming Senate and House of Representative's Apportionment Plan was attacked in the

1971 case, *Thompson v. Thomson, supra*, the *Thompson* Court held the apportionment was not unconstitutional as to either house even though the 1971 Wyoming Senate had an overall ratio of 1.63 and an overall range of 50% and the House of Representatives had an overall ratio of 2.59 and an overall range of 86%.

The thrust of appellants' suit assails: (1) generally the Wyoming State constitutional article providing each county with a representative and (2) specifically the portion of the 1981 Wyoming Apportionment Plan giving Niobrara County its own representative.

Appellants, in their Complaint, prayed that that portion of the Wyoming State Constitutional provision providing that each county shall have a representative and the portion of the 1981 Wyoming Apportionment Plan which gives Niobrara County its own representative be declared unconstitutional and for such other orders as would be necessary to afford full protection and relief to Appellants. A trial was held to determine whether Appellants were entitled to relief. The questions presented herein were specifically considered at that time.

Although Niobrara County has lost more than 700 persons since 1971 while the State of Wyoming has gained approximately 140,000 and the legislature has remained essentially the same size, the three judge panel found that the deviations in voting power were de minimis and that it did not constitute invidious discrimination because Wyoming is a unique state which places strong emphasis on the county unit as a primary administrative agency of the state government.

STATEMENT OF REASONS

The Court has not squarely addressed the consideration of whether a state may elect to treat its arbitrary political subdivision boundaries of importance paramount to equal representation of all voters.

Reviewing the facts of this case against the historical back drop of Wyoming State Apportionment case law evidences a dangerous trend developing which will continue to be violative

of substantial and basic constitutional rights if unchecked. In this large yet sparsely populated state the disparity in voting power of Wyoming citizens is likely to become enhanced.

To refrain from giving this case adequate consideration will be construed as a reversal in current apportionment law thereby spawning substantial regeneration of apportionment litigation.

If full plenary consideration is given this case, the court shall have the benefit of all the pertinent facts and issues.

CONCLUSION

For these reasons, this Court should note probable jurisdiction of this Appeal.

Respectfully submitted,

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COUNSEL FOR APPELLANTS

Appendix

APPENDIX

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

MARGARET R. BROWN, JUDY KNIGHT, JANE MAXWELL, MARY SHENEFIELD, MIRIAM S. STRAUGHAN, SANDRA H. SHUPTRINE, OLIVE J. WHITE,

Plaintiffs,

vs.

No. C81-292

THYRA THOMSON, as Secretary of State of the State of Wyoming, ED HERSCHLER, THYRA THOMSON, SHIRLEY WITTLER and JAMES B. GRIFFITH, as members of the State Canvassing Board, and ED HERSCHLER, as Governor of the State of Wyoming,

Defendants,

JAMES L. THOMPSON, GERALD D. BARDO, RUSSELL THOMPSON, KENNETH A. GROPP, RICHARD G. PFISTER, PETER M. HANSEN, GERTRUDE CHAMBERLAIN, BETTY PERCIVAL, MARY L. BURKE, BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF NIOBRARA, KENNETH R. FREEMAN, as a County Commissioner of the County of Niobrara and in his individual capacity, and LOUIS L. LANDKAMER as a County Commissioner of the County of Niobrara and in his individual capacity,

Intervening Defendants.

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District of Wyoming
APR 21 1982
William C. Beaman
CLERK

Sue Davidson and Edwin H. Whitehead of the firm Urbigkit & Whitehead, Cheyenne, Wyoming, appearing as counsel for plaintiffs.

Steven F. Freudenthal, Attorney General for the State of Wyoming, Peter J. Mulvaney, Deputy Attorney General for the State of Wyoming, and Randall T. Cox, Assistant Attorney General for the State of Wyoming, appearing as counsel for defendants.

Richard J. Barrett of the firm Hathaway, Speight and Kunz, Cheyenne, Wyoming, appearing as counsel for intervening defendants.

ORDER OF DISMISSAL WITH PREJUDICE

The above-entitled matter coming on regularly for hearing before a three-judge court panel, plaintiffs appearing by and through their attorneys, Sue Davidson and Edwin H. Whitehead, and defendants appearing by and through their attorneys, Randall T. Cox and Peter J. Mulvaney, and intervenors appearing by and through their attorney, Richard J. Barrett, and the Court having heard the evidence and taken said matter under advisement, and having carefully considered the pleadings, the evidence, the exhibits and the memoranda submitted by counsel, and the Court having prepared and filed herein its Memorandum Opinion, constituting the Findings of Fact and Conclusions of Law in this action holding generally for the defendants and intervenors and against the plaintiffs and the Court being fully advised in the premises;

NOW, THEREFORE, IT IS

ORDERED that the Complaint, together with the cause be and the same is hereby dismissed with prejudice, each party to pay their own costs.

Dated this 21st day of April, 1982.

/s/EWING T. KERR
U. S. District Judge
Member of the Panel

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

MARGARET R. BROWN, JUDY KNIGHT, JANE MAXWELL, MARY SHENEFIELD, MIRIAM S. STRAUGHAN, SANDRA H. SHUPTRINE, OLIVE J. WHITE,

Plaintiffs,

vs.

No. C81-292

THYRA THOMSON, as Secretary of State of the State of Wyoming, ED HERSCHLER, THYRA THOMSON, SHIRLEY WITTLER and JAMES B. GRIFFITH, as members of the State Canvassing Board, and ED HERSCHLER, as Governor of the State of Wyoming,

Defendants,

JAMES L. THOMPSON, GERALD D. BARDO, RUSSELL THOMPSON, KENNETH A. GROPP, RICHARD G. PFISTER, PETER M. HANSEN, GERTRUDE CHAMBERLAIN, BETTY PERCIVAL, MARY L. BURKE, BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF NIOBRARA, KENNETH R. FREEMAN, as a County Commissioner of the County of Niobrara and in his individual capacity, and LOUIS L. LANDKAMER as a County Commissioner of the County of Niobrara and in his individual capacity,

Intervening Defendants.

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Sue Davidson and Edwin H. Whitehead of the firm Urbigkit & Whitehead, Cheyenne, Wyoming, appearing as counsel for plaintiffs.

Steven F. Freudenthal, Attorney General for the State of Wyoming, Peter J. Mulvaney, Deputy Attorney General for the State of Wyoming, and Randall T. Cox, Assistant Attorney General for the State of Wyoming, appearing as counsel for defendants.

Richard J. Barrett of the firm Hathaway, Speight and Kunz, Cheyenne, Wyoming, appearing as counsel for intervening defendants.

MEMORANDUM OPINION

Before DOYLE, Circuit Judge, KERR and BRIMMER, District Judges.

KERR, District Judge

Plaintiffs have filed this action challenging the constitutionality of the 1981 Reapportionment Law allocating a representative to Niobrara County and Section 3 of Article 3 of the Wyoming State Constitution. Section 3 provides that "each county shall constitute a . . . representative district . . . each county shall have at least . . . one representative." Jurisdiction is based upon 28 U.S.C. § 1343(3) and (4). A three-judge court was convened pursuant to 28 U.S.C. § 2281 to hear this action.

The issue here involved is a narrow one and the action can hardly be described as one of first impression for this Court. For the fourth time, this Court is considering the question of the constitutionality of a reapportionment law enacted by the State legislature. *Schaefer v. Thomson,* 240 F.Supp. 247 (D. Wyo. 1964); *Schaefer v. Thomson,* 251 F.Supp. 450 (D. Wyo. 1965); *Thompson v. Thomson,* 344 F. Supp. 1378 (D. Wyo. 1972).

At issue before the Court is the relatively simple question of whether or not the allocation of a representative to Niobrara County constitutes invidious discrimination and, as such, is unconstitutional.

The relevant facts are simple and not in dispute. The parties have agreed to some of the facts in the form of a stipulation and the evidence presented by both parties to the Court was, for the most part, uncontroverted.

Niobrara County is the least populous of Wyoming's 23 counties with a population of 2,924 people in a state containing 469,557 people. Under the 1981 Reapportionment Act, Niobrara County was allocated its own representative in the State House of Representatives. Niobrara County has had its own representative since its creation in 1913, some 69 years.

Plaintiffs urge that this Court should find that such an allocation is unconstitutional and that Niobrara and neighboring Goshen County should be combined to form one representative district. Defendants and Intervenors take the opposite position and claim that the statistical difference in allocating a representative to Niobrara County is insignificant and that any statistical discrepancies are more than outweighed by a rational State interest in the current reapportionment.

In *Schaefer v. Thomson*, 251 F.Supp. 450 (D. Wyo. 1965), this Court was called upon to analyze the reapportionment, or lack thereof, of the State legislature. We found it necessary to reapportion the State Senate, but held that the reapportionment of the State House of Representatives was not invidiously discriminatory:

> We reiterate our previous opinion that the Wyoming Reapportionment Act of 1963 (Chapter 22, Session Laws of Wyoming, 1963) is not an invidious discrimination insofar as it provides for representation in the State House of Representatives and in that respect it does not violate the Fourteenth Amendment to the United States Constitution.

The *Schaefer* case was affirmed by the Supreme Court in 1966. *Harrison, et al. v. Schaefer, et al.*, 383 U.S. 269 (1966).

Under the 1963 Reapportionment Act, the House of Representatives had 61 representatives. The State of Wyoming had a total population of 329,646. Niobrara County had one representative with a population of 3,750. The "official divisor" was 5400 people. Four counties fell below the 5400 level, Crook, Niobrara, Sublette and Teton, but each still had its own representative.

In 1972, this Court was again called upon to evaluate another legislative reapportionment scheme. In upholding the constitutionality of the 1971 Reapportionment Law, this Court stated:

> It seems best at this point to dispose of the issue concerning the alleged unconstitutionality of the reapportionment of the House of Representatives. The Act made only five minimal adjustments to the 1963 Reapportionment of the House, which had previously been found constitutional by this Court and affirmed by the United States Supreme Court. The changes increased by one the number of representatives in two districts. These changes all reflected population variations.
>
> We are of the opinion that the reapportionment of the House by the 1971 Act does not constitute invidious discrimination for the reason that the 1963 reapportionment of the House was not substantially altered and, therefore, the 1971 Act does not abridge the Equal Protection clause of the Fourteenth Amendment to the United States Constitution.

At the time of the 1971 Act, the population of the State was 332,416. The number of representatives was increased to 62 and the official divisor was 5300. There were some shifts in population and representatives were changed to reflect said shifts. Five counties, Crook, Hot Springs, Niobrara, Sublette and Teton, were all below the official divisor in population and yet each received a representative in the House under the 1971 Act. Niobrara County had a population of 2,924 at that time.

Under the 1981 Reapportionment Act now before the Court, the population of the State is 469,557 and the official divisor is 7300. Once again, five counties, Crook, Hot Springs, Niobrara, Sublette and Teton, fall below the population level of the official divisor. Each was given a representative under the 1981 Law. Changes were made to reflect shifting population figures in some of the impacted counties. The number of representatives was increased to 64. None of the changes in the 1981 Law are challenged herein with the exception of the allocation by the legislature of a representative to Niobrara County.

One of the factors to be considered in reapportionment cases involves statistical analysis of the relevant figures. In *White v. Regester,* 412 U.S. 755 (1973), the Supreme Court held that a deviation of more than 10 per cent requires that a rational state policy be established to justify the reapportionment. See also *Mahan v. Howell,* 410 U.S. 315 (1973); *Gaffney v. Cummings,* 412 U.S. 735 (1973).

Initially, the 89 per cent relative range figure would appear to conclusively establish a prima facie case and possibly invidious discrimination in the 1981 Reapportionment Law. A close examination of the other relevant statistics, however, soon reveals the fallacy of relying upon only one statistic. Utilizing only the overall relative range figure distorts the picture.

The population differential in Niobrara County between the 1965 court-ordered reapportionment, as affirmed by the Supreme Court, and the 1981 Reapportionment Law is the difference between 3,750 and 2,924, or 826 people.

Statistically, the "dilution" of the plaintiffs' votes is de minimis when Niobrara County has its own representative. The improvement overall with the representative deleted ranges from 0.0003 in Teton County to 0.0023 in Laramie County. Such minor improvement hardly reaches the level of significance.

In this action, we do not have a small percentage of the population electing a large number of representatives as was the case in the Senate in *Schaefer v. Thomson,* 251 F.Supp. 450 (D. Wyo. 1965). If Niobrara County continues to have its

own representative, 46.65 per cent of the population would elect 33 of 64 representatives. Thus, 46.65 per cent is the minimum population which could elect a majority of House members. This figure is comparable to the minimum population percentage of 47.52 per cent electing 53.33 per cent of the Senate seats in the 1965 *Schaefer v. Thomson* decision.

Alternatively, when considering the counties in which the plaintiffs reside, the Court finds that these seven counties elect 28 out of 64 representatives or 43.75 per cent. The seven counties contain 46.3 per cent of the total state population utilizing the 1980 census figures. Comparatively, if plaintiffs' plan is adopted and Niobrara County does not have its own representative, the seven counties in which plaintiffs reside would elect 28 representatives out of 63 or 44.4 per cent of the House of Representatives. Statistically, a .65 per cent change is trivial but, more importantly, such a percentage is insufficient to constitute invidious discrimination. Rather, the effect on plaintiffs is best described as de minimis.

The overall changes that have been made since this Court last considered this issue have not been of sufficient magnitude to constitute invidious discrimination.

The statistician who appeared before the Court was clear and emphatic when he stated that there was no statistically significant change in the relevant figures when the plan allocating a representative to Niobrara County was compared with a plan which combined Niobrara County with Goshen County, thus eliminating Niobrara County's representative.

Reapportionment plans are not stricken automatically because of a large deviation. Rather, upon such a showing, the burden of proof shifts to the state to establish a rational justification and state policy for the deviation. The standard to be applied is less stringent than in Congressional reapportionment cases. *Mahan v. Howell, supra.*

In *Mahan,* the Supreme Court clearly stated that a state reapportionment plan must consider population figures but that deviations could be justified by legitimate state interests provided that invidious discrimination is not the end result:

We conclude, therefore, that the constitutionality of Virginia's legislative redistricting plan was not to be judged by the more stringent standards that *Kirkpatrick* and *Wells* make applicable to congressional reapportionent, but instead by the equal protection test enunciated in *Reynolds v. Sims, supra*. We reaffirm its holding that "the Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable." 377 U.S., at 577. We likewise reaffirm its conclusion that "[s]o long as the divergences from a strict population standard are based on legitimate considerations incident to the effectuation of a rational state policy, some deviations from the equal-population principle are constitutionally permissible with respect to the apportionment of seats in either or both of the two houses of a bicameral state legislature." Id., at 579.

The policy of maintaining the integrity of political subdivision lines in the process of reapportioning a state legislature, the policy consistently advanced by Virginia as a justification for disparities in population among districts that elect members to the House of Delegates, is a rational one. It can reasonably be said, upon examination of the legislative plan, that it does in fact advance that policy.

In *Gaffney v. Cummings, supra*, the Supreme Court expanded its discussion on the role of population figures in determining reapportionment:

More fundamentally, Reynolds recognized that "the achieving of fair and effective representation for all citizens is . . . the basic aim of legislative apportionment," id., at 565-566, and it was for that reason that the decision insisted on substantial equality of populations among districts.

> This is a vital and worthy goal, but surely its attainment does not in any common sense way depend upon eliminating the insignificant population variations involved in this case. Fair and effective representation may be destroyed by gross population variations among districts, but it is apparent that such representation does not depend solely on mathematical equality among district populations. There are other relevant factors to be taken into account and other important interests that States may legitimately be mindful of. See *Mahan v. Howell, supra; Abate v. Mundt,* 403 U.S. 182 (1971); *Dusch v. Davis,* 387 U.S. 112 (1967); *Sailors v. Board of Education,* 387 U.S. 105 (1967); *Burns v. Richardson, supra. An unrealistic overemphasis on raw population figures, a mere nose count in the districts, may submerge these other considerations and itself furnish a ready tool for ignoring factors that in day-to-day operation are important to an acceptable representation and apportionment arrangement.* [Emphasis added].

Both the State defendants and the intervening defendants have established a rational policy basis which justifies the statistical deviations which exist under the 1981 Reapportionment Law.

Wyoming as a state is unique among her sister states. A small population is encompassed by a large area. Counties have always been a major form of government in the State. Each county has its own special economic and social needs. The needs of the people are different and distinctive. Given the fact that the representatives from the combined counties of Niobrara and Goshen would probably come from the larger county, i.e. Goshen, the interests of the people of Niobrara County would be virtually unprotected.

The people within each county have many interests in common such as public facilities, government administration, and work and personal problems. Under the facts of this action, to deny these people their own representative borders on

abridging their right to be represented in the determination of their futures.

In Wyoming, the counties are the primary administrative agencies of the State government. It has historically been the policy of the State that counties remain in this position.

The taxing powers of counties are limited by the Constitution and some State statutes. Supplemental monies are distributed to the counties in accordance with appropriations designated by the State Legislature. It comes as no surprise that the financial requirements of each county are different. Without representation of their own in the State House of Representatives, the people of Niobrara County could well be forgotten.

It is the opinion of this Court that the allocation by the State Legislature of a representative to Niobrara County in the 1981 Reapportionment Law is not unconstitutional. The allocation is not statistically significant and does not constitute invidious discrimination. Under the 1981 Reapportionment Law, the integrity of political boundaries remains intact while a rational State policy continues to be maintained as it has been since 1913 in Niobrara County.

This Memorandum Opinion constitutes the Findings of Fact and Conclusions of Law and additional findings and conclusions are unnecessary.

An Order will be entered dismissing the Complaint with prejudice. Each party is to pay their own costs.

Dated this 21st day of April, 1982.

/s/William E. Doyle
United States Circuit Judge

/s/Ewing T. Kerr
United States District Judge

/s/Clarence A. Brimmer
United States District Judge

DOYLE, Circuit Judge - SPECIAL CONCURRENCE

I concur in both the result and the reasoning given by Judge Kerr in his opinion. I have prepared a supplemental opinion not because of any difference that I have, but rather to express my own conclusions based upon the study of the record and of the cases.

As Judge Kerr said, the issue here is whether the action of the legislature in enacting the reapportionment statute was in error because it gave to Niobrara County a representative, even though its population did not justify it. Wyoming has a Constitutional provision, § 3 of Article III, of the Wyoming State Constitution, which provides that "each county shall constitute a representative district * * * each county shall have at least * * * one representative."

Jurisdiction herein arises under 28 U.S.C. § 1343(3) and (4). A three-judge court was convened pursuant to 28 U.S.C. § 2284 to hear this action.

The issue involved is, as indicated above, a somewhat narrow one. It pertains to a single county. The Legislature sought to follow a formula provided by Wyoming Statute § 28-2-109 (9)(ii). It reads as follows:

> The rates for the apportionment of the representatives is the smallest number of people per representative which when divided into the population in each representative district as shown by the official results of the 1980 federal decennial census with fractions rounded to the nearest whole number results in a house with sixty-three (63) representatives.

Section 3 of Article III really requires that the reapportionment be carried out county by county. The average population for a representative was determined to be 7,337. As to every county in Wyoming except Niobrara it was possible to come very close to carrying out the ideal in accordance with the representative number. A bona fide effort was made to fairly arrive at each solution in accordance with the formula. The result was about as fair and equal as was possible. To be sure,

there were some counties which were slightly over-represented and some which were to a slight degree under-represented, and Niobrara is the only county which could be regarded as being substantially over-represented, because its population was shown to be 2,924. An effort was made to follow out the preceding history by awarding a representative to Niobrara County. It had held its own from the 1971 census to the present time, the population remaining at 2,924. During previous years it had been a more populous county, and also one rich in minerals, and productive in farming and ranching. However, since the sixties there have been some population changes, and these changes have left Niobrara with a relatively small population considering its size and importance, in relationship to the representation number of 7,337.

As we have noted above, each county has traditionally been a representative unit, and, indeed, this approach has been approved by the Supreme Court. *Harrison v. Schaefer,* 383 U.S. 269 (1966). Five counties, Crook, Hot Springs, Niobrara, Sublette and Teton, were all over-represented, but Niobrara had a lower population for the official divisor than the others. The Wyoming Legislature recognized this, and it raised the number of representatives from 63 to 64 in order to give Niobrara the representation that it had previously had. In the other counties where the population was below the divisor each received one representative, notwithstanding that it resulted in their being slightly over-represented.

The only result which is attacked by the plaintiffs is Niobrara, because, I suppose, the numerical difference is great. The over-representation is noteworthy.

But it strikes me that no one has suffered discrimination as a result of this. If a representative had been taken away from one of the other counties in order to give Niobrara one, it would be a different matter. Someone would have suffered. On the other hand, inasmuch as the Legislature created a new additional representative, rather than taking away one or more, the result was a total of 64 rather than 63. As a result of this, no county suffered, and no one can claim that he or she was

injured. Niobrara was benefited, but no corresponding injury flowed from the action. Every other county comes very close to fair and equitable representation.

If the numbers approach were to be followed religiously it would mean that one single county would have to relinquish representation. Represented districts would have to be merged in order to satisfy the one-man, one-vote formula. As Judge Kerr has indicated in his opinion this would upset the representation by county approach that has been historically followed in Wyoming. It would result in inequity in terms of one county having no representation whatsoever, and all other counties having at least one representative. This would result in others having all the representation. This could result in a populous county being paired nearer this representative district with a small county. The large county would dominate the election.

Wyoming has good reasons for clinging to the county as a representative district because this insures that the pecular needs of each and every county can be represented in the Legislature. Although this might not carry out fully the equality of numbers of voters within the various election districts it comes close enough to be roughly fair.

The Legislature posed an alternative, and that was that if the one representative in Niobrara County plan was held to be invalid, that Niobrara would be placed in an election district with neighboring Goshen County, which has a population of 12,040, and has two representatives. Thus, the result of this would be that Goshen's representatives would be assigned the task of representing Niobrara County, also. The consequence would be that Niobrara would not have its own representative.

In the case of *Reynolds v. Sims*, 377 U.S. 533 (1964), the Supreme Court found the reapportionment of the Alabama Legislature to be unconstitutional where the ratio between population in the largest Senate district to the smallest was 41 to 1, and the ratio between the largest and the smallest House district was 15 to 1. As a result of the reapportionment, a small minority of the population, 25.7%, was allowed to elect

a majority of the representatives, and 25.1% to elect a majority of the members of the Senate. *Reynolds* established that both houses of the state legislature have to be apportioned so that the districts are as near to equal population as is practical. The Court stressed, however, that "mathematical exactness or precision" is not required. *Id.* at 577. There must be substantial compliance with the goal of population equality. The *Reynolds* Court also held that a state may rationally consider according to political subdivisions some independent representation in at least one body of the state legislature, as long as the basic standard of equality of population among districts is maintained. *Id.* at 580. The Court there pointed out that "carried too far, a scheme giving at least one seat in one house to each political subdivision (for example, to each county), could easily result, in many states, in a total subversion of the equal population principle." *Id.* at 581. That latter possibility is not present, of course, in the case at bar.

One of the recent cases in which the Supreme Court has determined the presence of invidious discrimination is *Swann v. Adams*, 385 U.S. 440 (1967), wherein the Court held that a variance of 25.65% in one house of the Florida legislature, and 33.55% in the other was impermissible, "absent a satisfactory explanation grounded on acceptable state policy." *Id.* at 444.

Kilgarlin v. Hill, 386 U.S. 120 (1967), invalidated a state plan, too. There the Court held that the 1965 Texas reapportionment statute was invalid. The plan provided that districts varied from 14.84% over-represented to 11.64% under-represented, for a total deviation of 26.48%, with the ratio between the largest and the smallest districts being 1.31 to 1. There again it was said this was presumptively invalid.

Whitcomb v. Chavis, 403 U.S. 124 (1971), held that where there was a maximum variance in population of Indiana Senate seats of 28.20%, with the ratio between the largest and the smallest districts of 1.327 to 1, and the maximum variance in house districts of 24.78% with a ratio of 1.279 to 1, the apportionment plan did not comply with the requirements of the equal

protection clause. None of the above cited cases govern the present situation involving as it does a single county which has received a benefit, namely representation.

The more recent case of *Mahan v. Howell*, 410 U.S. 315 (1973), is relied on by both sides. The reapportionment of the Virginia House of Delegates was challenged as being in violation of the Equal Protection Clause of the Fourteenth Amendment because there were impermissible population deviations of 16.4%. It was held in *Mahan* that this variation was not excessive. It resulted from Virginia's rational objective of preserving the integrity of political subdivision lines. The *Mahan* Court relied on *Reynolds* for the point that more flexibility is afforded to states in legislative reapportionment than is allowed in congressional redistricting. Such flexibility was ruled in *Mahan* to be constitutionally permissible for the reason that there are a larger number of seats in the state legislative body to be distributed than in congress, and as a result it may be possible for a state to use political subdivision lines to a greater extent in establishing state legislative districts.

The more stringent standards of *Kirkpatrick v. Preisler*, 394 U.S. 526 (1969), and *Wells v. Rockefeller*, 394 U.S. 542 (1969), were rejected. Instead, the Court reaffirmed the *Reynolds* doctrine, "that as long as the divergences are based on legitimate considerations incident to the effectuation of a rational state policy, some deviation from the equal population principle are permissible * * *." *Mahan, supra*, at 325. The 16% deviation which was approved in *Mahan* is a good deal less than the percentage deviations that were found to be invalid in the previous decisions of the Supreme Court. It was acknowledged that the percentage deviation approved in *Mahan* "may well approach the tolerable limits; we do not find it exceeds them." *Id.* at 329.

Gaffney v. Cummings, 412 U.S. 735 (1973), and its companion, *White v. Regester*, 412 U.S. 755 (1973), also define standards for reapportionment. In *Gaffney*, the maximum deviation is 7.83% and in *White*, 9.9%. In both cases the Court concluded that there was no violation of equal protection, and that

such minor deviations did not make out a *prima facie* case of invidious discrimination.

Gaffney stands for the proposition that the aim of legislative apportionment is fair and effective representation for all citizens. *Id.* at 748. It was acknowledged that this could be destroyed by gross population variations among districts, but it is apparent that such representation does not depend solely upon mathematical equality among district populations; other relevant factors are to be considered, as well as important state interests. The question that is to be asked in order to comply with the decision in *Gaffney* is will this plan deprive any person of fair and effective representation in the state legislature.

In *White* the Court said "[W]e do not consider relatively minor population deviations among state legislative districts to substantially dilute the weight of individual votes in the larger districts so as to deprive individuals in these districts of fair and effective representation." *Id.* at 764.

This brings us back to the present case and the disproportion in a single district. Is it injurious to the remainder of the population of Wyoming? No discomfort is apparent as a result of giving the people of Niobrara County the sorely needed representation. It finally is to be noted and concluded that there is not the slightest sign of any group of people being discriminated against here. There is no indication that the larger cities or towns are being discriminated against; on the contrary, Cheyenne, Laramie, Casper, Sheridan, are not shown to have been suffered in the slightest degree. There has been no preference for the cattle-raising or agricultural areas as such.

In reading the decisions of the Supreme Court, one tends to conclude that the apportionment cases differ on their facts, and Wyoming is certainly no exception. Its problems are different from those which are present in most every other state in the union. Geographically it is large, but population-wise, it is relatively small, although it is growing. There were substantial differences in many of the plans that were condemned, but these were across the board and were not present in a

single unit, as here. *Cf. Connor v. Finch*, 431 U.S. 407 (1977); *Roman v. Sincock*, 377 U.S. 695 (1964), 710; *Reynolds v. Sims, supra*, 377 U.S. 533 (1964).

In *Connor, supra*, the result might very well have been different had Mississippi taken pains to call attention to the unique features in the political structure sufficient to justify more than *de minimus* variations.

The defendants in the case at bar rely heavily on the fact that prior Wyoming reapportionment plans have been upheld, and it is true that the 1963 plan, outlined in 251 F.Supp. 450 (D. C. Wyo. 1965), was affirmed by the Supreme Court, *sub nom.* in *Harrison v. Schaefer*, 383 U.S. 269 (1966). There is little to distinguish the 1966 case from the present case, and therefore, one would be hard put to reach a different conclusion in this case without, in effect, overruling the Supreme Court's affirmance in the *Schaefer* case, a course which we do not choose to follow.

In conclusion, after having heard the evidence and after having reviewed it, together with the well reasoned opinion of Judge Kerr, I see good reasons for concurring in the opinion of Judge Kerr, and in denying the relief which has been sought by the plaintiffs, i.e., judicial reapportionment of the several counties in the state. The legislative reapportionment by the Wyoming Legislature was generally fair and equitable. The representation for Niobrara County did not injure the other counties. The representation given to Niobrara was accomplished by adding one more representative than had been planned. The result was not discriminatory nor invidious.

One further thought: The Legislature's alternative reduction of the number of members by one, and the combining of Niobrara County with Goshen County, while it might satisfy the numbers, is not, in any other respect, an attractive option.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

MARGARET R. BROWN, JUDY KNIGHT, JANE MAXWELL, MARY SHENEFIELD, MIRIAM S. STRAUGHAN, SANDRA H. SHUPTRINE, OLIVE J. WHITE,

Plaintiffs,

vs.

No. C81-292

THYRA THOMSON, as Secretary of State of the State of Wyoming, ED HERSCHLER, THYRA THOMSON, SHIRLEY WITTLER and JAMES B. GRIFFITH, as members of the State Canvassing Board, and ED HERSCHLER, as Governor of the State of Wyoming,

Defendants,

JAMES L. THOMPSON, GERALD D. BARDO, RUSSELL THOMPSON, KENNETH A. GROPP, RICHARD G. PFISTER, PETER M. HANSEN, GERTRUDE CHAMBERLAIN, BETTY PERCIVAL, MARY L. BURKE, BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF NIOBRARA, KENNETH R. FREEMEN, as a County Commissioner of the County of Niobrara and in his individual capacity, and LOUIS L. LANDKAMER as a County Commissioner of the County of Niobrara and in his individual capacity,

Intervening Defendants.

FILED
District of Wyoming
MAY 12 1982
William C. Beaman
CLERK

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Margaret R. Brown, Judy Knight, Jane Maxwell, Mary Shenefield, Miriam S. Straughan, Sandra H. Shuptrine, and Olive J. White, the Plaintiffs above-named, hereby appeal to the Supreme Court of the United States from the Order of Dismissal with Prejudice entered in this action April 21, 1982.

This appeal is taken pursuant to 28 U.S.C. § 1253.

The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States and include all pleadings, exhibits and pre-trial and trial transcripts.

DATED this 11th day of May, 1982.

Margaret R. Brown, Judy Knight,
Jane Maxwell, Mary Shenefield,
Miriam S. Straughan, Sandra H.
Shuptrine, Olive J. White,
Plaintiffs,

/s/By: SUE DAVIDSON
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I, Sue Davidson, an attorney in the law firm of Urbigkit & Whitehead, P.C., attorneys of record for Margaret R. Brown, Judy Knight, Jane Maxwell, Mary Shenefield, Miriam S. Straughan, Sandra H. Shuptrine, Olive J. White, Appellants herein, depose and say, that I served a copy of the foregoing Notice Of Appeal to The Supreme Court Of The United States on: Attorney General Steve Freudenthal, State Capitol, Cheyenne, WY 82002 and Richard J. Barrett, Hathaway,

Speight & Kunz, Suite 402, 2424 Pioneer Ave., Cheyenne, WY 82001.

DATED this 11th day of May, 1982.

/s/SUE DAVIDSON

STATE OF WYOMING)
) ss.
COUNTY OF LARAMIE)

Subscribed and sworn to before me by Sue Davidson this 12th day of May, 1982.

Witness my hand and official seal.

/s/KELLIE A. ERICKSON
NOTARY PUBLIC

My Commission Expires 9-11-83.

Office - Supreme Court, U.S.
FILED
DEC 18 1982
ALEXANDER L. STEVAS,
CLERK

No. 82-65

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

MARGARET R. BROWN, JUDY KNIGHT, JANE MAXWELL, MARY SHENEFIELD, MIRIAM S. STRAUGHAN, SANDRA H. SHUPTRINE, OLIVE J. WHITE,

Appellants,

v.

THYRA THOMSON, as Secretary of the State of Wyoming, ED HERSCHLER, THYRA THOMSON, SHIRLEY WITTLER and JAMES B. GRIFFITH, as members of the State Canvassing Board, and ED HERSCHLER, as Governor of the State of Wyoming,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT, FOR THE DISTRICT OF WYOMING

JOINT APPENDIX EXHIBITS

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APPEAL DOCKETED JULY 13, 1982
JURISDICTION NOTED OCTOBER 4, 1982

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DEFINITIONS OF STATISTICAL TERMS AND CONCEPTS FREQUENTLY APPLIED BY COURTS REVIEWING APPORTIONMENTS

IDEAL DISTRICT POPULATION (ideal population per representative seat)	Total State Population divided by Total number of representative seats.

INDIVIDUAL DISTRICTS

PERSONS REPRESENTED (Actual District Population per representative)	District Population divided by Number of representative seats for that County or District
DEVIATION	Statistical Measure of Difference between "Persons Represented" from a particular district and the Ideal District Population, expressed as a numerical difference (ABSOLUTE) or as a ratio or percentage (RELATIVE).
ABSOLUTE DEVIATION	Ideal District Population less the Actual District Population A negative value, indicating fewer persons-per-representative than the Ideal, indicates over-representation of the people in that District. A positive value, conversely indicates under-representation.
RELATIVE DEVIATION	Actual District Population divided by Ideal District Population The resulting value is a ratio of the persons represented (actual district population) to the ideal population per representative. If the ratio is multiplied by 100, the resulting value is a percentage. If the ratio exceeds 1.00, and the

percentage thereby exceeds 100% of ideal, this indicates under-representation; that is, the district population per representative is greater than the population-per-representative in the "Ideal District". A ratio of less than 1.00 indicates over-representation.

RANGE AND RATIO COMPARISONS

The overall range between the **most over-represented district** (with the greatest negative value in the absolute deviation column and the lowest ratio in the relative deviation column) and the **most under-represented district** (with the greatest positive absolute deviation and largest relative deviation ratio). This measure may be termed OVERALL ABSOLUTE RANGE or OVERALL RELATIVE RANGE, depending on which factors are used.

OVERALL ABSOLUTE RANGE

The simplest method of calculating OVERALL ABSOLUTE RANGE is to sum the value of the largest positive absolute deviation value and the largest negative absolute deviation value (without regard to whether they are positive or negative in the addition process). In other words, the absolute value of these figures is summed.

OVERALL RELATIVE RANGE

The simplest method for calculating OVERALL RELATIVE RANGE is to subtract the smallest value (always less than 1.00) from the largest value (always greater than 1.00); the difference is the OVERALL RELATIVE RANGE.

RATIO (of the largest population-per-representative to the smallest population-per-representative.)	Largest population-per-representative divided by the smallest population-per-representative. The largest population-per-representative value shows the most under-represented district; the smallest population-per-representative figure represents the most over-represented districts.

AVERAGE (MEAN) DEVIATION

Sum of all deviations divided by number of entries.

ABSOLUTE MEAN DEVIATION	Sum of all absolute deviation values (without reference to " + " and " – " signs) divided by number of districts.
RELATIVE MEAN DEVIATION	Sum of all relative deviation (measured as distance from ideal) divided by number of districts.

- - - - - - - - - -

MINIMUM PERCENTAGE OF POPULATION ELECTING A MAJORITY OF SEATS (HOUSE OR SENATE) Measure of dominance of a legislative body gained by over-represented districts. Generally, a hypothetical worst-case selection of over-represented counties is used to provide an estimate of the maximum theoretical vote dilution.	The smallest percentage of the population, from generally over-represented counties and counties nearly ideal, taken together, which can elect a bare majority of seats in a legislative body.

1963
WYOMING SENATE APPORTIONMENT

COUNTY	1960 POPULATION	NO. OF SEN.	PERSONS REPRESENTED	DEVIATION ABSOLUTE-RELATIVE
Albany	21,290	1	21,290	-8104 or 1.61
Big Horn	11,898	1	11,898	1288 0.90
Campbell	5,861	1	5,861	7325 0.44
Carbon	14,937	1	14,937	-1751 1.13
Converse	6,366	1	6,366	6820 0.48
Crook	4,691	1	4,691	8495 0.36
Fremont	26,168	1	26,168	-12982 1.98
Goshen	11,941	1	11,941	1245 0.91
Hot Springs	6,365	1	6,365	6821 0.48
Johnson	5,475	1	5,475	7711 0.42
Laramie	60,149	2	30,075	-16889 2.28
Lincoln	9,018	1	9,018	4168 0.68
Natrona	48,623	2	24,811	-11625 1.88
Niobrara	3,570	1	3,570	9436 0.28
Park	16,874	1	16,874	-3688 1.28
Platte	7,195	1	7,195	5991 0.55
Sheridan	18,989	1	18,989	-5803 1.44
Sublette	3,778	1	3,778	9408 0.29
Sweetwater	17,920	1	17,920	-4734 1.36
Teton	3,062	1	3,062	10124 0.23
Uinta	7,484	1	7,484	5702 0.57
Washakie	8,883	1	8,883	4303 0.67
Weston	7,929	1	7,929	5257 0.60
Totals	329,646	25		

As apportioned by the Wyoming Legislature, Session Laws 1963, Ch. 22. (Later invalidated by the U.S. District Court, Wyoming, *Schaefer v. Thomson*, 240 F. Supp. 247 (1964)).

Population figures are from the U.S. Census of Population for 1960.

Ideal Representation is one Senator per 13,186 residents. A Relative Deviation Value of less than 1.00 indicates over-representation; a value of more than 1.00 indicates under-representation.

Range, Ratio and Average Deviation

1963 Wyoming Senate Apportionment

OVERALL RANGE—ABSOLUTE: ..... (sum of absolute deviation values of most over-represented county, Teton, and most under-represented county, Laramie, ignoring "+" and "–" signs)	27,013
OVERALL RANGE—RELATIVE: ..... (sum of relative deviation values of most over-represented county, Teton, and most under-represented county, Laramie, ignoring "+" and "–" signs)	2.05
RATIO: ..... (ratio of largest population-per-seat from the most under-represented county to the smallest population-per-seat from the most over-represented county)	9.82
ABSOLUTE MEAN (AVERAGE) DEVIATION:	6942
RELATIVE MEAN (AVERAGE) DEVIATION:	0.53

1965

WYOMING SENATE APPORTIONMENT

DISTRICT	1960 POPULATION	NO. OF SEN.	PERSONS REPRESENTED	DEVIATION ABSOLUTE-RELATIVE
Albany	21,290	2	10,645	343 or 0.97
Big Horn	11,898	1	11,898	-910 1.08
Campbell-Johnson	11,336	1	11,336	-348 1.03
Carbon	14,937	1	14,937	-3949 1.36
Converse-Niobrara	10,116	1	10,116	872 0.92
Crook-Weston	12,620	1	12,620	-1632 1.15
Fremont-Hot Springs	32,533	3	10,844	144 0.99
Goshen	11,941	1	11,941	-953 1.09
Laramie	60,149	5	12,030	-1042 1.09
Natrona	49,623	4	12,406	-1418 1.13
Park	16,874	2	8,437	2551 0.77
Platte	7,195	1	7,195	3793 0.65
Sheridan	18,939	2	9,469	1519 0.86
Sublette-Teton No. Lincoln	11,245	1	11,245	-257 1.02
Sweetwater	17,920	2	8,960	2028 0.82
Uinta-So. Lincoln	12,097	1	12,097	-1109 1.10
Washakie	8,883	1	8,883	2105 0.81
Totals	329,646	30		

As apportioned by the U.S. District Court in *Schaefer v. Thomson*, 251 F. Supp. 450 (1965).

Population figures are from the U.S. Census of Population for 1960.

Ideal Representation is one Senator per 10,988 residents. A Relative Deviation Value of less than 1.00 indicates over-representation; a value of more than 1.00 indicates under-representation.

Range, Ratio and Average Deviation

1965 Wyoming Senate Apportionment
(by the Court)

OVERALL RANGE—ABSOLUTE: (sum of absolute deviation values of most over-represented county, Platte, and most under-represented county, Laramie, ignoring " + " and " – " signs)	7,742
OVERALL RANGE—RELATIVE: (sum of relative deviation values of most over-represented county, Platte, and most under-represented county, Laramie, ignoring " + " and " – " signs)	0.71
RATIO: (ratio of largest population-per-seat from the most under-represented county to the smallest population-per-seat from the most over-represented county)	2.08
ABSOLUTE MEAN (AVERAGE) DEVIATION:	1469
RELATIVE MEAN (AVERAGE) DEVIATION:	0.13

1971
WYOMING SENATE APPORTIONMENT

DISTRICT	1970 POPULATION	NO. OF SEN.	VOTERS: RATIO	DEVIATION ABSOLUTE-RELATIVE
Albany	26,431	2	13,215	-2135 or 1.19
Big Horn	10,202	1	10,202	878 0.92
Campbell-Johnson	18,544	2	9,272	1808 0.84
Carbon	13,354	1	13,354	-2274 1.21
Converse-Niobrara	8,862	1	8,862	2218 0.80
Crook-Weston	10,842	1	10,842	238 0.98
Fremont	28,352	2	28,352	-3096 1.28
Goshen-Platte	17,371	2	8,686	2394 0.78
Hot Springs-Washakie	12,521	1	12,521	-1441 1.13
Laramie	56,360	5	11,272	-192 1.02
Uinta-So. Lincoln	11,465	1	11,465	-385 1.03
Natrona	51,264	4	12,816	-1736 1.16
Park	17,752	2	8,876	2204 0.80
Sheridan	17,852	2	8,926	2154 0.81
Sublette-Teton No. Lincoln	12,853	1	12,853	-1773 1.16
Sweetwater	18,391	2	9,196	1884 0.83
Totals	332,416	30		

As apportioned by the Wyoming Legislature, Session Laws 1971, Ch. 161. (Approved by the U.S. District Court, Wyoming, in *Thompson v. Thomson*, 344 F. Supp. 1378 (1972)).

Population figures are from the U.S. Census of Population for 1970.

Ideal Representation is one Senator per 11,080 residents. A Relative Deviation Value of less than 1.00 indicates over-representation; a value of more than 1.00 indicates under-representation.

Range, Ratio and Average Deviation

1971 Wyoming Senate Apportionment

OVERALL RANGE—ABSOLUTE: ..... (sum of absolute deviation values of most over-represented county, Goshen-Platte, and most under-represented county, Fremont, ignoring "+" and "–" signs)	5490
OVERALL RANGE—RELATIVE: ..... (sum of relative deviation values of most over-represented county, Goshen-Platte, and most under-represented county, Fremont, ignoring "+" and "–" signs)	0.50
RATIO: ..... (ratio of largest population-per-seat from the most under-represented county to the smallest population-per-seat from the most over-represented county)	1.63
ABSOLUTE MEAN (AVERAGE) DEVIATION:	1676
RELATIVE MEAN (AVERAGE) DEVIATION:	0.15

1981
WYOMING SENATE APPORTIONMENT

COUNTY	POPULATION	NO. OF SEN.	PERSONS REPRESENTED	DEVIATION ABSOLUTE-RELATIVE
Albany	29,062	2	14,531	1121 or 0.93
Big Horn	11,896	1	11,896	3756 0.76
Campbell-Johnson	31,067	2	15,534	118 0.99
Carbon	21,896	1	21,896	-6244 1.40
Converse	14,069	1	14,069	1583 0.90
Crook-Weston	12,414	1	12,414	3238 0.79
Fremont	38,992	2	19,496	-3844 1.25
Goshen-Niobrara	14,964	1	14,964	688 0.96
Hot Springs-Washakie	15,206	1	15,206	446 0.97
Laramie	68,649	4	17,162	-1510 1.10
Lincoln	12,177	1	12,177	3475 0.78
Natrona	71,856	4	17,964	-2312 1.15
Park	21,639	1	21,639	-5987 1.38
Platte	11,975	1	11,975	3677 0.77
Sheridan	25,048	2	12,524	3128 0.80
Sublette-Teton	13,903	1	13,903	1749 0.89
Sweetwater	41,723	3	13,908	1744 0.89
Uinta	13,021	1	13,021	2631 .83
Total	469,557	30		

As apportioned by the Wyoming Legislature, Session Laws 1981, Ch. 76, Section 1.

Population figures are from the U.S. Census of Population of 1980.

Ideal Representation is one Senator per 15,652 residents. A Relative Deviation Value of less than 1.00 indicates over-representation; a value of more than 1.00 indicates under-representation.

Range between most over-represented county and most under-represented county:

Absolute = 10,000
Relative = 0.64

Absolute Mean Average Deviation = 2625
Relative Mean Average Deviation = 0.17

Range, Ratio and Average Deviation

1981 Wyoming Senate Apportionment

OVERALL RANGE—ABSOLUTE: ..... (sum of absolute deviation values of most over-represented county, Big Horn, and most under-represented county, Carbon, ignoring "+" and "–" signs)	10,000
OVERALL RANGE—RELATIVE: ..... (sum of relative deviation values of most over-represented county, Big Horn, and most under-represented county, Carbon, ignoring "+" and "–" signs)	0.64
RATIO: ..... (ratio of largest population-per-seat from the most under-represented county to the smallest population-per-seat from the most over-represented county)	1.84
ABSOLUTE MEAN (AVERAGE) DEVIATION:	2625
RELATIVE MEAN (AVERAGE) DEVIATION:	0.17

1963

WYOMING HOUSE OF REPRESENTATIVES*

POPULATION OF STATE - 329,646

NUMBER OF REPRESENTATIVES - 61

IDEAL REPRESENTATION - 5,404

OFFICIAL DIVISOR - 5,400

COUNTY	POPULATION	NO. OF REP's	PERSONS REPRESENTED	DEVIATION ABSOLUTE-RELATIVE
Albany	21,290	4	5,323	81 or 0.99
Big Horn	11,898	2	5,949	-545 1.10
Campbell	5,861	1	5,861	-487 1.08
Carbon	14,937	3	4,979	425 0.92
Converse	6,366	1	6,366	-962 1.18
Crook	4,691	1	4,691	713 0.87
Fremont	26,168	5	5,234	170 0.97
Goshen	11,941	2	5,971	-567 1.10
Hot Springs	6,365	1	6,365	-961 1.18
Johnson	5,475	1	5,475	-71 1.01
Laramie	60,149	11	5,468	-64 1.01
Lincoln	9,018	2	4,509	895 0.83
Natrona	49,623	9	5,514	-110 1.02
Niobrara	3,750	1	3,750	1654 0.69
Park	16,874	3	5,625	-221 1.04
Platte	7,195	1	7,195	-1791 1.33
Sheridan	18,989	4	4,747	657 0.88
Sublette	3,778	1	3,778	1626 0.70
Sweetwater	17,920	3	5,973	-569 1.11
Teton	3,062	1	3,062	2342 0.57
Uinta	7,484	1	7,484	-2080 1.38
Washakie	8,883	2	4,442	962 0.82
Weston	7,929	1	7,929	-2525 1.47
Totals	329,646	61		

Population figures are official U.S. Census Bureau decennial figures for Wyoming.

"Persons Represented" is calculated by dividing the county population by its number of representatives in the Wyoming House. This figure is the Actual County Representation.

Absolute Deviation is difference between Ideal Representation and Actual County Representation. A positive deviation value indicates over-representation.

Relative Deviation is calculated by dividing the Actual County Representation by the Ideal Representation. A value of less than 1.00 indicates over-representation. A value of more than 1.00 indicates under-representation.

*Wyoming Session Laws 1963, Ch. 22, § 3.

Range, Ratio and Average Deviation

1963 Wyoming House Apportionment

OVERALL RANGE—ABSOLUTE: ..... (sum of absolute deviation values of most over-represented county, Teton, and most under-represented county, Weston, ignoring " + " and " – " signs)	4867
OVERALL RANGE—RELATIVE: ..... (sum of relative deviation values of most over-represented county, Teton, and most under-represented county, Weston, ignoring " + " and " – " signs)	0.90
RATIO: ..... (ratio of largest population-per-seat from the most under-represented county to the smallest population-per-seat from the most over-represented county)	2.59
ABSOLUTE MEAN (AVERAGE) DEVIATION:	889
RELATIVE MEAN (AVERAGE) DEVIATION:	0.16

1971

WYOMING HOUSE OF REPRESENTATIVES*

POPULATION OF STATE - 332,416

NUMBER OF REPRESENTATIVES - 62

IDEAL REPRESENTATION - 5,362

OFFICIAL DIVISOR - 5,300

COUNTY	POPULATION	NO. OF REP's	PERSONS REPRESENTED	DEVIATION ABSOLUTE-RELATIVE
Albany	26,431	5	5,286	76 or 0.99
Big Horn	10,202	2	5,101	261 0.95
Campbell	12,597	2	6,299	-937 1.17
Carbon	13,354	3	4,451	911 0.83
Converse	5,938	1	5,938	-576 1.11
Crook	4,535	1	4,535	827 0.85
Fremont	28,352	5	5,670	-308 1.06
Goshen	10,885	2	5,443	-81 1.02
Hot Springs	4,952	1	4,952	410 0.92
Johnson	5,587	1	5,587	-225 1.04
Laramie	56,360	11	5,124	238 0.96
Lincoln	8,640	2	4,320	1042 0.81
Natrona	51,264	10	5,126	236 0.96
Niobrara	2,924	1	2,924	2438 0.55
Park	17,752	3	5,917	-555 1.10
Platte	6,486	1	6,486	-1124 1.21
Sheridan	17,852	3	5,951	-589 1.11
Sublette	3,755	1	3,755	1607 0.70
Sweetwater	18,391	3	6,130	-768 1.14
Teton	4,823	1	4,823	539 0.90
Uinta	7,100	1	7,100	-1738 1.32
Washakie	7,569	1	7,569	-2207 1.41
Weston	6,307	1	6,307	-945 1.18
Totals	332,416	62		

Population figures are official U.S. Census Bureau decennial figures for Wyoming.

"Persons Represented" is calculated by dividing the county population by its number of representatives in the Wyoming House. This figure is the Actual County Representation.

Absolute Deviation is difference between Ideal Representation and Actual County Representation. A positive deviation value indicates over-representation.

Relative Deviation is calculated by dividing the Actual County Representation by the Ideal Representation. A value of less than 1.00 indicates over-representation. A value of more than 1.00 indicates under-representation.

*Wyoming Session Laws 1971, Ch. 161, §§ 3, 5.

Range, Ratio and Average Deviation

1971 Wyoming House Apportionment

OVERALL RANGE—ABSOLUTE: (sum of absolute deviation values of most over-represented county, Niobrara, and most under-represented county, Washakie, ignoring "+" and "–" signs)	4645
OVERALL RANGE—RELATIVE: (sum of relative deviation values of most over-represented county, Niobrara, and most under-represented county, Washakie, ignoring "+" and "–" signs)	0.86
RATIO: (ratio of largest population-per-seat from the most under-represented county to the smallest population-per-seat from the most over-represented county)	2.59
ABSOLUTE MEAN (AVERAGE) DEVIATION:	810
RELATIVE MEAN (AVERAGE) DEVIATION:	0.15

1981

WYOMING HOUSE OF REPRESENTATIVES*

POPULATION OF STATE - 469,557

NUMBER OF REPRESENTATIVES - 64

IDEAL REPRESENTATION - 7,337

COUNTY	POPULATION	NO. OF REP's	PERSONS REPRESENTED	DEVIATION ABSOLUTE	RELATIVE
Albany	29,062	4	7,266	71 or	0.99
Big Horn	11,896	2	5,948	1389	0.81
Campbell	24,367	3	8,122	-785	1.11
Carbon	21,896	3	7,299	38	0.99
Converse	14,069	2	7,035	302	0.96
Crook	5,308	1	5,308	2029	0.72
Fremont	38,992	5	7,798	-461	1.06
Goshen	12,040	2	6,020	1317	0.82
Hot Springs	5,710	1	5,710	1627	0.78
Johnson	6,700	1	6,700	637	0.91
Laramie	68,649	9	7,628	-291	1.04
Lincoln	12,177	2	6,089	1248	0.83
Natrona	71,856	9	7,984	-647	1.09
Niobrara	2,924	1	2,924	4413	0.40
Park	21,639	3	7,213	124	0.98
Platte	11,975	2	5,988	1349	0.82
Sheridan	25,048	3	8,349	-1012	1.14
Sublette	4,548	1	4,548	2789	0.62
Sweetwater	41,723	5	8,345	-1008	1.14
Teton	9,355	1	9,355	-2018	1.28
Uinta	13,021	2	6,511	826	0.89
Washakie	9,496	1	9,496	-2159	1.29
Weston	7,106	1	7,106	231	0.97
Totals	469,557	64			

Population figures are official U.S. Census Bureau decennial figures for Wyoming.

"Persons Represented" is calculated by dividing the county population by its number of representatives in the Wyoming House. This figure is the Actual County Representation.

Absolute Deviation is difference between Ideal Representation and Actual County Representation. A positive deviation value indicates over-representation.

Relative Deviation is calculated by dividing the Actual County Representation by the Ideal Representation. A value of less than 1.00 indicates over-representation. A value of more than 1.00 indicates under-representation.

*Wyoming Session Laws 1981, Ch. 76, §§1, 3.

Range, Ratio and Average Deviation

1963 Wyoming Senate Apportionment

OVERALL RANGE—ABSOLUTE: ..... (sum of absolute deviation values of most over-represented county, Niobrara, and most under-represented county, Washakie, ignoring " + " and " – " signs)	6572
OVERALL RANGE—RELATIVE: ..... (sum of relative deviation values of most over-represented county, Niobrara, and most under-represented county, Washakie, ignoring " + " and " – " signs)	0.89
RATIO: ..... (ratio of largest population-per-seat from the most under-represented county to the smallest population-per-seat from the most over-represented county)	3.25
ABSOLUTE MEAN (AVERAGE) DEVIATION:	1164
RELATIVE MEAN (AVERAGE) DEVIATION:	0.16

1981

WYOMING HOUSE OF REPRESENTATIVES***

POPULATION OF STATE - 469,557

NUMBER OF REPRESENTATIVES - 63

IDEAL REPRESENTATION - 7,453

COUNTY	POPULATION	NO. OF REP's	PERSONS REPRESENTED	DEVIATION ABSOLUTE	RELATIVE
Albany	29,062	4	7,266	187 or	0.97
Big Horn	11,896	2	5,949	1504	0.80
Campbell	24,367	3	8,122	-669	1.09
Carbon	21,896	3	7,299	154	0.98
Converse	14,069	2	7,035	418	0.94
Crook	5,308	1	5,308	2145	0.71
Fremont	38,992	5	7,798	-345	1.05
Goshen-Niobrara	14,964	2	7,482	-29	1.00
Hot Springs	5,710	1	5,710	1743	0.77
Johnson	6,700	1	6,700	753	0.90
Laramie	68,649	9	7,628	-175	1.02
Lincoln	12,177	2	6,089	1364	0.82
Natrona	71,856	9	7,984	-531	1.07
Park	21,639	3	7,213	240	0.97
Platte	11,975	2	5,988	1465	0.80
Sheridan	25,048	3	8,349	-896	1.12
Sublette	4,548	1	4,548	2905	0.61
Sweetwater	41,723	5	8,345	-892	1.12
Teton	9,355	1	9,355	-1902	1.26
Uinta	13,021	2	6,511	942	0.87
Washakie	9,496	1	9,495	-2043	1.27
Weston	7,106	1	7,106	347	0.95
Totals	469,557	63			

Population figures are official U.S. Census Bureau decennial figures for Wyoming.

"Persons Represented" is calculated by dividing the county population by its number of representatives in the Wyoming House. This figure is the Actual County Representation.

Absolute Deviation is difference between Ideal Representation and Actual County Representation. A positive deviation value indicates over-representation.

Relative Deviation is calculated by dividing the Actual County Representation by the Ideal Representation. A value of less than 1.00 indicates over-representation. A value of more than 1.00 indicates under-representation.

***Apportionment as proposed by plaintiffs, joining Niobrara and Goshen Counties into one Representative District and thereby reducing the total number of Representatives to 63.

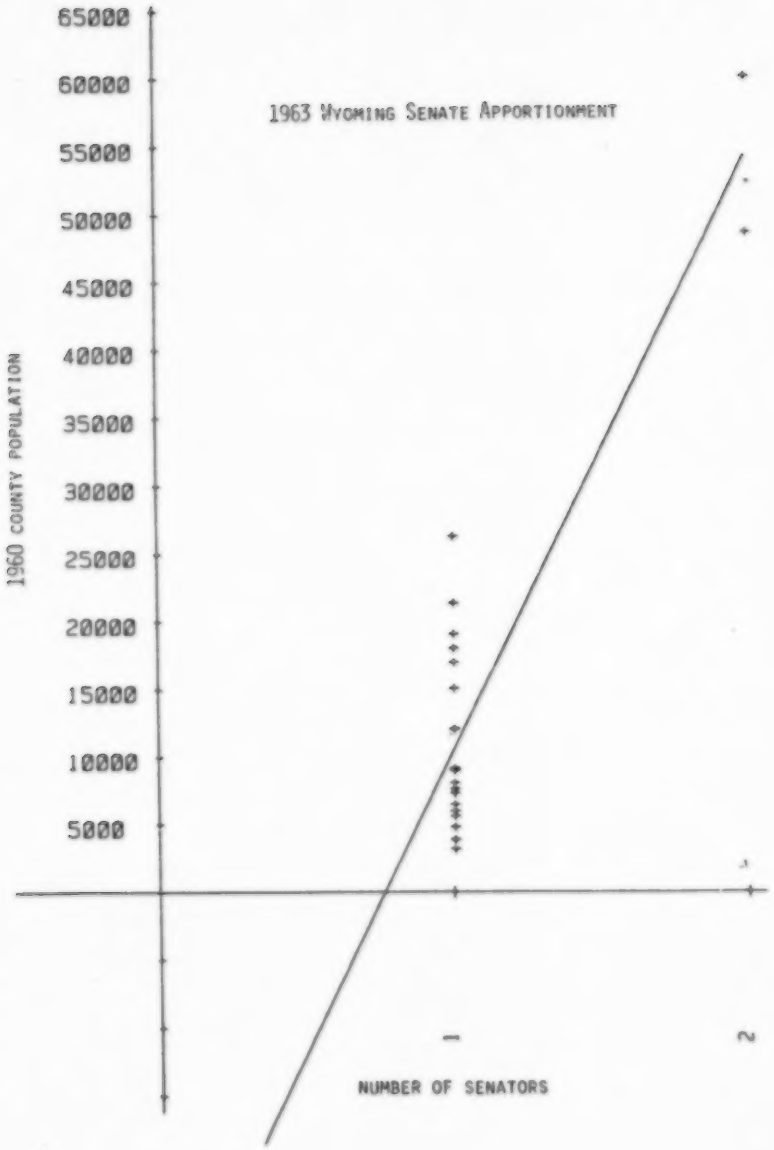
Range, Ratio and Average Deviation

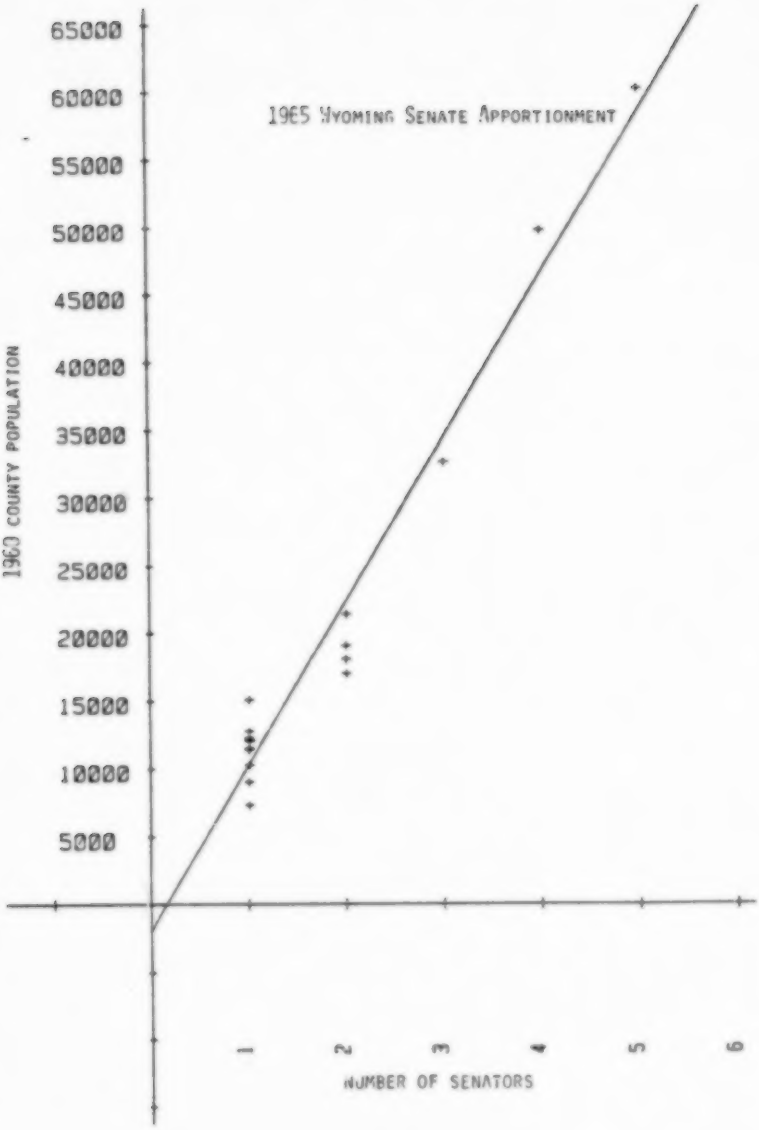
1981 Wyoming House
(Proposed 63-seat reapportionment)

OVERALL RANGE—ABSOLUTE: ..... (sum of absolute deviation values of most over-represented county, Sublette, and most under-represented county, Washakie, ignoring "+" and "–" signs)	4948
OVERALL RANGE—RELATIVE: ..... (sum of relative deviation values of most over-represented county, Sublette, and most under-represented county, Washakie, ignoring "+" and "–" signs)	0.66
RATIO: ..... (ratio of largest population-per-seat from the most under-represented county to the smallest population-per-seat from the most over-represented county)	2.09
ABSOLUTE MEAN (AVERAGE) DEVIATION:	984
RELATIVE MEAN (AVERAGE) DEVIATION:	0.13

COMPARISONS

APPORTIONMENT	RANGE ABSOLUTE	RANGE RELATIVE	RATIO	MEAN (average) DEVIATION ABSOLUTE	MEAN (average) DEVIATION RELATIVE
1963 Senate	27,013	2.05	9.82	6,942	0.53
1965 Senate	7,742	0.71	2.08	1,469	0.13
1971 Senate	5,490	0.50	1.63	1,676	0.15
1981 Senate	10,000	0.64	1.84	2,625	0.17
1963 House	4,867	0.90	2.59	889	0.16
1971 House	4,645	0.86	2.59	810	0.15
1981 House	6,562	0.89	3.25	1,164	0.16
1981 House (modified by combining Goshen and Niobrara Counties; 63 seats)	4,948	0.66	2.09	984	0.13


1963 Wyoming Senate Apportionment
1960 County Population
65000
60000
55000
50000
45000
40000
35000
30000
25000
20000
15000
10000
5000
1
2
Number of Senators


1965 Wyoming Senate Apportionment
1960 County Population
65000
60000
55000
50000
45000
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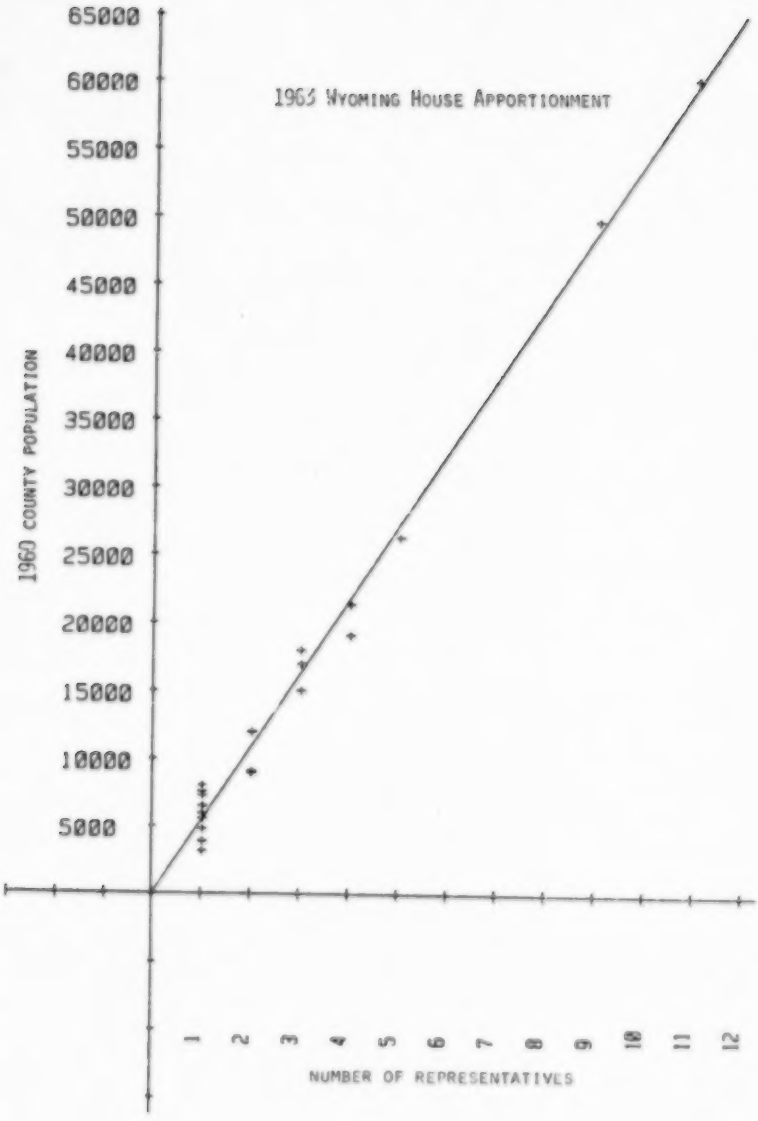
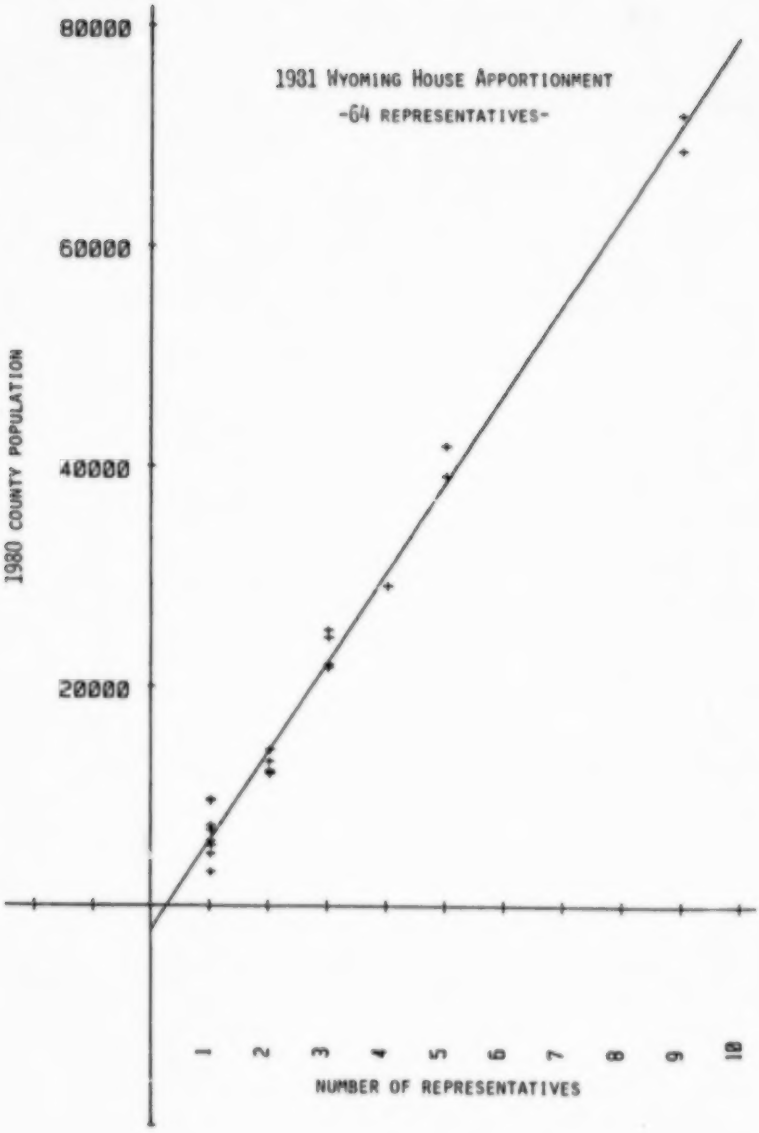
30000
25000
20000
15000
10000
5000
1
2
3
4
5
6
Number of Senators


1963 WYOMING HOUSE APPORTIONMENT
1960 COUNTY POPULATION
65000
60000
55000
50000
45000
40000
35000
30000
25000
20000
15000
10000
5000
1
2
3
4
5
6
7
8
9
10
11
12
NUMBER OF REPRESENTATIVES


1981 Wyoming House Apportionment
-64 representatives-
80000
60000
40000
20000
1980 county population
1
2
3
4
5
6
7
8
9
10
number of representatives

1963 APPORTIONMENT WYOMING SENATE
POPULATION OF STATE - 329,646

- - - - - - - - - -

MINIMUM POPULATION ELECTING A MAJORITY OF SENATORS

- - - - - - - - - -

NUMBER OF SENATORS - 25
MAJORITY OF SENATORS -13

"WORST-CASE" SCENARIO*

COUNTY	POPULATION	NO. OF SENATORS
Campbell	5,861	1
Converse	6,366	1
Crook	4,691	1
Hot Springs	6,365	1
Johnson	5,475	1
Lincoln	9,018	1
Niobrara	3,750	1
Platte	7,195	1
Sublette	3,778	1
Teton	3,062	1
Uinta	7,484	1
Washakie	8,883	1
Weston	7,929	1
Totals:	79,857	13

Total population of listed counties, divided by total population of the state, yields the percentage of population represented by a majority of Senators.

79,857 ÷ 329,646 = 24.23% of population
13 ÷ 25 = 52.00% of Senators.

* The "worst-case" scenario is developed by selecting counties that are over-represented (or near to ideally represented) with a sufficient number of senators to yield a majority in the Senate. Fifteen (15) over-represented counties, including all shown above and Big Horn County (deviation value of 0.90) and Goshen County (deviation value of 0.91), would have elected 15 Senators. Goshen and Big Horn were deleted to bring the number of Senators elected down to 13, a bare majority. These two counties were the least over-represented of the 15 counties.

CONCLUSION: 24.23% of the population would have elected 52.00% of the Senators under this apportionment. (Laws 1963, Ch. 22). (Invalidated in *Schaefer v. Thomson*, 240 F. Supp. 247, D. Wyo. 1964.)

1965 APPORTIONMENT WYOMING SENATE
POPULATION OF STATE - 329,646

. . . . . .

MINIMUM POPULATION ELECTING A MAJORITY OF SENATORS

. . . . . .

NUMBER OF SENATORS - 30
MAJORITY OF SENATORS -16

"WORST-CASE" SCENARIO*

COUNTY	POPULATION	NO. OF SENATORS
Albany	21,290	2
Campbell-Johnson	11,366	1
Converse-Niobrara	10,116	1
Fremont-Hot Springs	32,533	3
Park	16,874	2
Platte	7,195	1
Sheridan	18,939	2
Sublette-Teton-No. Lincoln	11,245	1
Sweetwater	17,920	2
Washakie	8,883	1
Totals:	156,331	16

Total population of listed counties, divided by total population of the state, yields the percentage of population represented by a majority of Senators.

156,331 ÷ 329,646 = 47.42% of population
16 ÷ 30 = 53.33% of Senators.

* The "worst-case" scenario is developed by selecting counties that are over-represented (or near to ideally represented) with a sufficient number of senators to yield a majority in the Senate. Eight counties (or multi-county districts) were over-represented, electing 14 Senators. Two districts, Campbell-Johnson (deviation value of 1.03) and Sublette-Teton-North Lincoln (deviation value of 1.02), were added to yield a list of districts electing 16 Senators, a bare majority. These two districts were the least under-represented of the remaining districts.

CONCLUSION: 47.42% of the population elected 53.33% of the Senators under this apportionment. (*Schaefer v. Thomson,* 251 F. Supp. 450, D. Wyo. 1965.)

1963 APPORTIONMENT
WYOMING HOUSE OF REPRESENTATIVES
1960 POPULATION OF STATE - 329,646

- - - - - - - - - - -

MINIMUM POPULATION ELECTING
A MAJORITY OF REPRESENTATIVES

- - - - - - - - - - -

NUMBER OF REPRESENTATIVES - 61
MAJORITY OF REPRESENTATIVES - 31

"WORST-CASE" SCENARIO*

COUNTY	POPULATION	NO. OF REPRESENTATIVES
Carbon	14,937	3
Crook	4,691	1
Fremont	26,168	5
Laramie	60,149	11
Lincoln	9,018	2
Niobrara	3,750	1
Sheridan	18,989	4
Sublette	3,778	1
Teton	3,062	1
Washakie	8,883	2
Totals:	153,425	31

Total population of listed counties, divided by total population of the state, yields the percentage of population represented by a majority of Representatives.

153,425 ÷ 329,646 = 46.54% of population
31 ÷ 61 = 50.82% of Representatives.

* The "worst-case" scenario is developed by selecting counties that are over-represented (or near to ideally represented) with a sufficient number of representatives to yield a majority in the House. Here, Laramie County (deviation value of 1.01) was substituted for Albany County (deviation value of 0.99) to bring the total of Representatives to 31.

CONCLUSION: 46.54% of the population was represented by 50.82% of the Representatives in the House following the 1963 apportionment. (Laws 1963, Ch. 22, §3).

1971 APPORTIONMENT
WYOMING HOUSE OF REPRESENTATIVES
POPULATION OF STATE - 332,416

- - - - - - - - - -

MINIMUM POPULATION ELECTING
A MAJORITY OF REPRESENTATIVES

- - - - - - - - - -

NUMBER OF REPRESENTATIVES - 62
MAJORITY OF REPRESENTATIVES - 32

"WORST-CASE" SCENARIO*

COUNTY	POPULATION	NO. OF REPRESENTATIVES
Big Horn	10,202	2
Carbon	13,354	3
Crook	4,535	1
Laramie	56,360	11
Lincoln	8,640	2
Natrona	51,264	10
Niobrara	2,924	1
Sublette	3,755	1
Teton	4,823	1
Totals:	155,857	32

Total population of listed counties, divided by total population of the state, yields the percentage of population represented by a majority of Representatives.

155,857 ÷ 332,416 = 46.89% of population
32 ÷ 62 = 51.61% of Representatives.

* The "worst-case" scenario is developed by selecting counties that are over-represented (or near to ideally represented) with a sufficient number of representatives to yield a majority in the House. Here, all over-represented counties, including all shown above and Albany and Hot Springs Counties, elected 38 Representatives. Albany County (deviation value of 0.99) and Hot Springs County (deviation value of 0.92), with six seats, were deleted from the list to leave nine counties which elected 32 Representatives, a bare majority.

CONCLUSION: 46.89% of the population was represented by 51.61% of the Representatives in the House following the 1971 apportionment. (Laws 1971, Ch. 161, §§3, 5).

1981 APPORTIONMENT
WYOMING HOUSE OF REPRESENTATIVES
POPULATION OF STATE - 469,557

. . . . . .

MINIMUM POPULATION ELECTING
A MAJORITY OF REPRESENTATIVES

. . . . . .

NUMBER OF REPRESENTATIVES - 64
MAJORITY OF REPRESENTATIVES - 33

"WORST-CASE" SCENARIO*

COUNTY	POPULATION	NO. OF REPRESENTATIVES
Albany	29,062	4
Big Horn	11,896	2
Carbon	21,896	3
Converse	14,069	2
Crook	5,308	1
Fremont	38,992	5
Goshen	12,040	2
Hot Springs	5,710	1
Johnson	6,700	1
Lincoln	12,177	2
Niobrara	2,924	1
Park	21,639	3
Platte	11,975	2
Sublette	4,548	1
Uinta	13,021	2
Weston	7,106	1
Totals:	219,063	33

Total population of listed counties, divided by total population of the state, yields the percentage of population represented by a majority of Representatives.

219,063 ÷ 469,557 = 46.65% of population
33 ÷ 64 = 51.56% of Representatives.

* The "worst-case" scenario is developed by selecting counties that are over-represented (or near to ideally represented) with a sufficient number of representatives to yield a majority in the House. Here, 15 over-represented counties and Fremont County (deviation value of 1.06) would elect 33 Representatives, a bare majority. No over-represented counties were omitted.

CONCLUSION: 46.65% of the population will be represented by 51.56% of the representatives in the House under this apportionment. (Laws 1981, Ch. 76, §§1, 30).

1981 APPORTIONMENT
WYOMING HOUSE (MODIFIED)
POPULATION OF STATE - 469,557

- - - - - - - - - -

MINIMUM POPULATION ELECTING
A MAJORITY OF REPRESENTATIVES

- - - - - - - - - -

NUMBER OF REPRESENTATIVES - 63
MAJORITY OF REPRESENTATIVES - 32

"WORST-CASE" SCENARIO*

COUNTY	POPULATION	NO. OF REPRESENTATIVES
Albany	29,062	4
Big Horn	11,896	2
Carbon	21,896	3
Converse	14,069	2
Crook	5,308	1
Fremont	38,992	5
Goshen-Niobrara	14,964	2
Hot Springs	5,710	1
Johnson	6,700	1
Lincoln	12,177	2
Park	21,639	3
Platte	11,975	2
Sublette	4,548	1
Uinta	13,021	2
Weston	7,106	1
Totals:	219,063	32

Total population of listed counties, divided by total population of the state, yields the percentage of population represented by a majority of Representatives.

219,063 ÷ 469,557 = 46.65% of population
32 ÷ 63 = 50.79% of Representatives.

* The "worst-case" scenario is developed by selecting counties that are over-represented (or near to ideally represented) with a sufficient number of Representatives to yield a majority in the House of Representatives. The same counties were selected as for the 1981 House Apportionment (Official), except that Goshen and Niobrara Counties were joined into one Representative district.

CONCLUSION: 46.56% of the population would be represented by 50.79% of the Representatives under this plan.

COMPARATIVE SUMMARY

One of the named plaintiffs lives in each of the Wyoming Counties listed below.

This table depicts a comparison of each county's representation in the Wyoming House, as a percentage:

$$\frac{\text{Number of Representatives from the County}}{\text{Total Number of Representatives in the House (x 100 = \%)}}$$

Each county's "percentage of representation" is shown for two alternative apportionments - the 1981 Apportionment enacted at W.S. 28-2-109 (a) (64 seats) and the apportionment that would result from a combination of Niobrara and Goshen Counties into one Representative District (63 seats).

The right hand column contains the numerical difference between these apportionments, for each county. The representation of each respective county in a 64-seat House was subtracted from the representation in a 63-seat House. The differences are shown as 100ths of one percent; in decimal form they would be shown as .0010, .0007, and so forth.

County	% of 64 House seats	% of 63 House seats	Difference
Albany	6.25	6.35	10/100ths of 1%
Campbell	4.69	4.76	7/100ths of 1%
Carbon	4.69	4.76	7/100ths of 1%
Fremont	7.81	7.94	13/100ths of 1%
Laramie	14.06	14.29	23/100ths of 1%
Sheridan	4.69	4.76	7/100ths of 1%
Teton	1.56	1.59	3/100ths of 1%

GOSHEN COUNTY REVENUE

1979-1981 (in thousands of dollars)

Revenue Source	FY1979	FY1980	FY1981	Authorizing State Statute
Assessed Valuation	$40,425	$42,227	$45,227	
Property Tax	448	485	535	Art. 15, §5
Sales & Use Tax	349	397	355	W.S. 39-291, 39-306-1, 39-311, 39-331
Gasoline Tax	115	130	138	W.S. 39-6-210
Cigarette Tax	20	13	11	
Payment in Lieu of Taxes	0	16	15	Fed.
Licenses, fees, & fines	171	128	131	
Investment Income	56	103	50	
Revenue Sharing	112	139	140	Fed.
Miscellaneous	295	117	185	
Bond Retirement	142	142	7	
Sanitary Engineer	13	11	17	
TOTALS[1]	1,721	1,681	1,584	

[1] Totals do not include cash reserve or carry-over cash balance.
Source: Goshen County Budgets

NIOBRARA COUNTY REVENUE

1979-1981 (in thousands of dollars)

Revenue Source	FY1979	FY1980	FY1981	Authorizing State Statute
Assessed Valuation	$22,657	$25,487	$41,588	
Property Tax	166	261	477	Art. 15, §5
Sales & Use Tax	64	76	94	W.S. 39-291, 39-306-1, 39-311, 39-331
Gasoline Tax	60	67	65	W.S. 39-6-210
Cigarette Tax	2	2	2	
Payment in Lieu of Taxes	87	64	85	Fed.
Licenses, fees, & fines	33	46	48	
Investment Income	25	26	38	
Revenue Sharing	79	72	63	Fed.
Miscellaneous	9	2	28	
Rent	10	9	17	
Bond Retirement	43	45	48	
TOTALS[1]	578	670	965	

[1] Totals do not include cash reserve or carry-over cash balance.
Source: Niobrara County Budgets

COMPARISON OF TAX COLLECTIONS AND RECEIPTS

FY1981

Niobrara County			
Tax	$ Collected	$ Received	$ Difference
Sales & Use Tax[1]	$ 779,270	$386,430	-$392,840
Gasoline Tax	281,976	35,247	- 246,729
Cigarette Tax	39,156	24,179	- 14,977
Total	$1,100,402	$445,856	-$654,546

Goshen County			
Tax	$ Collected	$ Received	$ Difference
Sales & Use Tax[1]	$2,349,315	$835,092	-$1,514,223
Gasoline Tax	573,448	71,681	- 501,767
Cigarette Tax	138,369	85,443	- 52,926
Total	$3,061,132	$992,216	-$2,068,916

[1] Niobrara County collects the 1% optional sales tax; Goshen County does not.

Source: Wyoming Department of Revenue and Taxation, *Annual Report*, 1981.

Niobrara County Comparison
of Projected 2% Severance Tax
Collections and Receipts

Year	Total Value of Oil & Gas Production	Amount of 2% Severance Tax Collected	Amount of 2% Severance Tax Received[1]	Amount Difference
FY1982	$40,987,500	$ 819,750	$ 235,828	-$ 583,922
FY1983	41,943,218	838,864	253,485	- 585,379
FY1984	47,321,019	946,420	306,372	- 640,048
FY1985	52,511,240	1,050,225	360,628	- 689,597
		$3,655,259	$1,156,313	-$2,498,946

[1] Amount of 2% severance tax received includes Lusk and Niobrara County. Negligible amounts received by small communities has not been included.

Source: Legislative Services Office, Audit Division, *Taxes on Wyoming Minerals: History and Projections,* 1981.

Goshen County Comparison
of Projected 2% Severance Tax
Collections and Receipts

Year	Total Value of Oil & Gas Production	Amount of 2% Severance Tax Collected	Amount of 2% Severance Tax Received[1]	Amount Difference
FY1982	$ 88,536	$1,771	$ 833,625	+$ 831,854
FY1983	92,245	1,845	896,040	+ 894,195
FY1984	98,282	1,966	1,082,991	+ 1,081,025
FY1985	100,035	2,001	1,274,739	+ 1,272,738
TOTAL		$7,583	$4,087,395	+$4,079,812

[1] Amount received includes Torrington and Goshen County.

Source: Legislative Services Office, Audit Division, *Taxes on Wyoming Minerals: History and Projections*, 1981.

Goshen County School District # 1 Revenue 1979-1980

Revenue Source	FY1979 Revenue Amount	Per ADM	State Ave. Per ADM
Assessed Valuation	$ 40,425		
Local Source	1,343,184	538	962
County Sources	688,016	276	507
State Sources	3,731,839	1,496	669
Federal Sources	3,297	1	52
Total	5,766,336	2,311	2,190

Revenue Source	FY1980 Revenue Amount	Per ADM	State Ave. Per ADM
Assessed Valuation	$ 42,227		
Local Source	1,566,242	637	1,121
County Sources	714,158	290	558
State Sources	4,977,957	2,024	948
Federal Sources	2,578	1	43
Total	7,260,935	2,952	2,670

Revenue Source	FY1981 Revenue Amount	Per ADM	State Ave. Per ADM
Assessed Valuation	$ 45,227		
Local Source	1,669,016	703	1,366
County Sources	817,351	344	653
State Sources	5,623,617	2,369	1,114
Federal Sources	5,680	2	74
Total	8,115,664	3,418	3,207

Source: State Department of Education, Statistical Report Series, Wyoming Public Schools Fund Accounting and Reporting, 1979, 1980, and 1981.

Niobrara County School District # 1 Revenue 1979-1980

Revenue Source	FY1979 Revenue Amount	Per ADM	State Ave. Per ADM
Assessed Valuation	$ 22,657		
Local Source	687,535	1,163	962
County Sources	373,672	632	507
State Sources	339,672	575	669
Federal Sources	0	0	52
Total	1,400,879	2,370	2,190

Revenue Source	FY1980 Revenue Amount	Per ADM	State Ave. Per ADM
Assessed Valuation	$ 25,487		
Local Source	750,907	1,313	1,121
County Sources	383,247	670	558
State Sources	498,820	872	948
Federal Sources	0	0	43
Total	1,632,974	2,855	2,670

Revenue Source	FY1981 Revenue Amount	Per ADM	State Ave. Per ADM
Assessed Valuation	$ 41,588		
Local Source	1,164,212	2,042	1,366
County Sources	580,399	1,018	653
State Sources	302,959	531	1,114
Federal Sources	0	0	74
Total	2,047,570	3,591	3,207

Source: State Department of Education, Statistical Report Series, Wyoming Public Schools Fund Accounting and Reporting, 1979, 1980, and 1981.

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THE TOWN OF LUSK.

The Future Capital of Niobrara County . . . Fine Lands, Mines, Coal and Timber.

The Greatest Stock Shipping Point in the West— 40,000 Head of Cattle Shipped Last Fall.

Lusk lies in the fertile valley of the Running Water about 30 miles from the Nebraska line, on the Wyoming Central railroad. The country around it is being rapidly taken up. It is the shipping and trading point for the largest cattle ranches in the Northwest. Nearly 40,000 head of cattle were shipped from here last fall. These facts make it a very desirable point for merchants.

A temporary town was started about a year ago one mile west of its present site, but on the advent of the railroad a townsite was laid out in its present picturesque and advantageous situation. The first lots were sold on the 20th of last July, and it now has a population of 400 which number will be doubled in the next three months.

Lusk is 45 miles north of Ft. Laramie, 150 north of Cheyenne, 55 east of Douglas and 85 west of Chadron, Neb.

Laramie county is acknowledged to be entirely too large, and there is not the least doubt but the next winter's session of the legislative assembly will divide it just south of Ft. Laramie, when Lusk will be the only town of any description in the new county, and will, of course, be the county seat.

OUR BUSINESS MEN.

Starting from the depot and going south along the west side of Main street we find the following firms doing business.

Dennis Collins, propr. Collins House. Wm. Collins, Grocery. Cleveland Bros., Billiard hall and Saloon. John Cross, Saloon. Jacob Berkman, News Stand. Lusk Meat Market. Barber Shop. W. S. Peck, Barber Shop and Bath Rooms. Peter Sweeney, Saloon. Baker & Johnson, wholesale and retail General Merchandise and ranch supplies. City Drug Store. Richards Brothers, Bank. Baker Brothers, wholesale and retail Groceries, Clothing, hats, caps boots and shoes, and General Ranch supplies, also post office. S. Adamsky, Clothing, gents' furnishing goods, boots and shoes, hats and caps, etc. J. D. Waters, Saloon. A. Hughes, Restaurant. Bostelman & Co., Pioneer Drug Store. F. E. Aken, Jewelry. Frank Palmer, Photographer. HERALD office. O. P. Goodwin, Meat Market. J. F. Patterson, dry goods, clothing, boots and shoes, furnishing goods and groceries. Brooks & Son, Brooks House. O. P. Goodwin,

restaurant. Misses Eng & Larson, Restaurant.

Turning and going north on the east side of Main street we pass. D. A. Wucherer, Boots and Shoes. Mrs. Loud, Restaurant. Fred Schwartz, Meat Market. A building used for flour and feed by Baker Bros. F. L. Ketchum, Confectionery etc. Wm. Criswell, public hall. Jack Huff, Harness shop. E. E. Lonabaugh, law and real estate office. M. C. Anderson, Manager Lusk Hardware. J. L. Hogle, Saloon. B. S. Hart, City Hall, with Hogle's boarding house below. A. Tanghe, Bakery. Huling & Cerns, law and real estate. Mrs. Langworthy, Millinery etc. Bryson & Gustine, Chop House. Depot Restaurant by W. Allen. R. Beare, Bakery.

On East Second street are Redington & Co's livery barn, and wagon, buggy, coal and wood emplorium. Kingman & Son, Lumber. J. K. McCann, Law, etc.

On West Second street we find the Wyoming Lumber Co., managed by J. E. Rugg. J. P. Allbee, Blacksmithing.

Opposite the depot is B. W. McClure's Livery barn.

Our carpenters are Bruce & Castle, Chamberlain & Loblein, C. C. Keck & Bro and Louger & Bagley.

Look to the Future.

It is a fine remark of Emerson's that while simple minded men can see farms that are improved or cities that are builded, the wise man sees possible farms and cities. To reason that because a thing does not exist it cannot and will not exist is the acme of foolish reasoning. It is a fact of common observation that comparatively few men have been far-sighted enough to profit by the development of the west. We sometimes hear it said from a hasty superficial view that Wyoming will not sustain a large population. Which Wyoming, that of today or that of the future? We have cast our fortunes with the Wyoming that is to be, not the Wyoming of the past or the present. Fetterman has answered very well, the need of Central Wyoming for a few years. The Wyoming in the days of Fetterman's supremacy was a region undeveloped, practically a wilderness. Wyoming the wilderness is fast passing into history. We have to do with another Wyoming, with resources developed, industries diversified, population numbered by hundreds of thousands. Does any one imagine that the tide of western immigration is going to stop at the Wyoming line because the country beyond is broken and appears barren? Bless your dear heart my croaking friend your wisdom is sheer folly and your song a very old one. The same refrain was heard in Eastern Nebraska a few years ago and has been heard all along the line from the Mississippi

west. There have been a great many of your people in times past. They were troubled with doubts and fears. The country west of them certainly did look barren; uncultivated regions usually do; the soil, unquestionably appears to be sandy as the finest soil usually does until cultivated. Doubts and fears in the matter of the development of the west are very poor counselors. All along the line you can find hundreds of men who staid with their "questionings" and today enjoy the unique felicity of wearing holes in their apparel. The men who figure on the future make the fortunes. Wyoming a region of wonderful and manifold resources is destined to become one of the greatest and wealthiest states of the Union.
— Douglas Advertiser.

Why Our Winters Are Mild.

We believe it is not generally known in localities east of here that northwest winds (the coldest wind they have) are by far the warmest winds in this locality. Our south and other winds are not unlike those of Iowa, but our northwest winds seldom fail to cut off the snow if there be any on the ground. There is a tract of country in Wyoming west of the Black Hills, much of it fine agricultural land, is known as the Powder river country, but called medicine ground by the Indians because of its warm temperature. This country lying northwest of us, we believe the immediate cause of our northwest winds being so warm. The Box Butte country will produce fine winter wheat, and any fruits that can be raised in northern Missouri and Kansas. —Grip.

Which remarks apply equally as well, if not better, to the Runningwater valley in Wyoming.

Our Winter.

People down the road seem to think we are having a very severe winter up here, because the trains are occasionally blockaded. The fact is that in the present condition of the cuts on this line of road, two inches of snow and a little wind fill these cuts full and block the road for several days. Eighteen ° below zero is not severe weather, by any means, and it has fallen that low only once.

Intervening Defendant s Exhibit-DD
Reprinted from the Lusk Herald. June 2. 1910

The Lusk Herald

G. C. and A. H. FORSYTHE Publishers

TERMS

One Year (in advance) $3.00

Entered November 17, 1863, at Lusk, Wyoming, a second-class matter, under Act of Congress of March 3, 1879.

THURSDAY, JUNE 2, 1910

Is there a dearth of Democratic timber or are they only playing 'possum?

Don't let us overlook the fact that "charity should begin at home", although it should not stay there.

"To be or not to be" a candidate, that is the question. Whether is it more noble to go after it or wait until the mantle falls on our shoulders?

Most everyday brings a new candidate for some of the State offices on the Republican side. Certainly the office will not have to hunt the man and are we not to be congratulated on the fact that so many "tried and true" are willing to serve their county?

One important item of legislation, and one only, concerns us next winter, and that is the equitable division of Converse county. To further this laudable purpose, we must send a man from this end of the county who has had experience in dealings with men; a man who is a "mixer"; a man who understands the ins and outs in politics; a man who is not easily discouraged; a man who cannot be bribed nor swerved from his purpose; in short, a man who will have in mind his constitutents and their desires "first last and all the time." What man is there to fill the bill?

Intervening Defendant's Exhibit-EE
Reprinted from the Lusk Herald, Dec. 1, 1910

DECLARE UNANIMOUSLY FOR COUNTY DIVISION

Great Enthusiasm Manifested, Permanent Officers Elected and Committees Appointed for Work.

If the citizens of Lusk and vicinity could ever have been called apathetic in the matter of upholding civic pride, certainly the stigma was entirely wiped out last Saturday night when the most enthusiastic, most representative, most harmonious outpouring of its citizens ever assembled, met in Fraternity hall to take up in earnest and carry to a successful issue the matter of County Division. There was not one dissenting voice nor any expression which could be construed as antagonistic to the purpose for which the meeting was called.

Intervening Defendant s Exhibit-HH
Reprinted from the Lusk Herald, Jan 5 1911

ADVANTAGES OF LUSK

Some Cogent Reasons Why Settlers Looking for the Best Should Settle Here in Lusk or Vicinity.

Lusk is twenty-five years old and its marvelous growth in the last few years is the wonder of central and eastern Wyoming. Its growth is healthy, normal, not forced, and it will continue thus indefinitely.

Lusk is surrounded on all sides by the finest grazing land in the State. Experts say that the soil is the most productive of any and that the renown of this district as a dry farming section will reach far and near, after the farmer gets right down to business.

Lusk has two churches, Congregational and Episcopal, and it is fully expected that a Roman Catholic church will be added this year. The Lutherans hold services and a Baptist church has lately been organized a few miles northeast of Lusk.

Lusk has one of the finest High and Public School buildings in the State today, with a corps of instructors capable in every way, and this alone should be a good argument in favor of locating here.

Lusk is situated on the main line of the Chicago & Northwestern railroad and is the gateway to a land which is only commencing to be settled up.

Lusk is the central trading point for a vast territory and its trade is growing with the development of the surrounding country.

Lusk has an unprecedented demand for dwelling houses, and every year sees a number erected. Lusk is fast becoming a beautiful "city of homes."

Lusk is the best town east of Douglas and it will not be so very long when it will be crowding the city of "destiny."

Lusk has a number of good business houses and its business and professional men are progressive, active and alert.

Lusk has a Commercial Club composed of its solid citizens, ready to support any legitimate enterprise which would be for the good of the community. A Creamery and an Electric Lighting Plant are now under advisement.

Lusk has a good water works system, and will have a splendid sewerage system installed before the end of another year.

Lusk is, in short, progressive, wide-awake, substantial, a good place to live in.

Intervening Defendant s Exhibit-KK
Reprinted from the Lusk Herald, Apr. 27, 1911

Mr. and Mrs. Honest Voter

It is Now Up to You.

The Decision in Regard to County Division Rests With You; Weigh The Matter Well and Vote According to the Dictates of Your Conscience

The last argument for and against division will be made this week and nothing will remain to be done that the voter cannot do. It is now up to the qualified electors to say whether they favor the matter or not. No telling arguments have been made by the opponents of division, in fact, what little in quality though much in quantity has been said, carries no weight because of want of sincerity on the part of those making the charges. Fancy a man getting indignantly eloquent over the charge that the new county will have to assume a debt of $7,000.00, and writing columns about the fearful consequences; while the same individual a short time ago was willing and anxious; aye and is now, to saddle a debt of $30,000.00 on school district No. 2, for the erection of a school building which they could not fill in fifty years. The voters should not listen to this kind of slush for the simple reason that their statements lack sincerity and truth. Niobrara county will not have to assume any indebtedness at all, but as was shown lately in these colums, we have a substantial credit coming. A good argument in favor of division is the fact that all the large stock and sheep men, and all the prominent business men, all the people with large holdings are favorable to division. Knowing as they do that they will have to pay the big end of the taxes, do you suppose that merchant Snyder or Jacob Mill, Albert Rochelle or Billie Reynolds, Eugene Willson or Henry Gray, or in fact anyone with large property interest would advise division if he expected his taxes to be materially increased? Not on your tintype! We are as ready now for division as we will be ten years from now, so why should the matter be put off? Nothing can be gained, no good end can be served by putting off longer. VOTE FOR DIVISION!

Reasons for Division

LOWER TAXES

The first and most important reason is lower taxes, by reasons of the fact that Niobrara will be a third class county, resulting in greatly reduced salaries, no deputies and a much greater reduc-

tion in mileage and per diem fees caused by the shorter distance and time consumed in travel.

HOME GOVERNMENT

Government representation of our own; instead of voting to elect officers residing in Douglas and the west end to look after our affairs; we will be in a position to elect our own representatives who understand and are interested in our welfare, and not that of Douglas.

CENTRALLY LOCATED COUNTY SEAT

Instead of the residents of this end of the county having to take long, tedious journeys to the present county seat, we can choose a county seat location, central and easily accessible to all. At the present time personal petitions for the rebatement of erroneous taxes, possibly not exceeding $20.00 in amount, do not warrant a trip to the county seat because the expense of making such trip would exceed the amount of the rebate.

GOOD ROADS

In 1900 there was spent for roads in Converse county $8,762.32 of which what is now Niobrara received the insignificant sum of $635.68 as her share. This is poor treatment for us seeing that roads are badly needed in northern and eastern districts of the new county. When we organize Niobrara we will spend our own money in our own territory for roads and other necessary improvements.

NO BONDED INDEBTEDNESS

Under the laws of this state, as outlined and explained in another article in this issue, Niobrara will start free from any bonded indebtedness and with a substantial credit. Platte and Goshen counties, which have just voted for division, and have to assume large bonded indebtedness by reason of the impoverished state of Laramie county, carried for division by large majorities. Being in a much stronger financial condition, we will reap all the benefits and none of the disadvantages these two new counties will have to assume.

To sum up, every existing county today had to make a beginning and not one of them started out with the same bright prospects that lie in the path of Niobrara. Converse county had to assume a debt of one hundred thousand dollars when old Laramie was divided and look at her record. Only twenty thousand dollars bonded indebtedness, all of the old debt paid off and able to spend between forty and fifty thousand dollars for expenses yearly. With a salary and expense list of less than sixteen thousand dollars and with not one cent of indebtedness to carry don't you think that Niobrara can set up house-keeping without any fear of keeping the wolf from the door?

Personal Opinions

I favor county division because I believe we will get lower taxes thereby.

Jacob Mill

A home county government will give us more money for and hence better roads; we need them up north and all settlers up there should vote as I am going to do—for division.

Albert Rochelle

I may be a little optimistic in my opinion, but I firmly believe that land values will go up with the organization of the new county.

Thos. Bell

In my opinion the taxes cannot be any higher, because the running expenses of the county will be very small.

C. L. Christian

County division is going to be a good thing for us, it will bring us nearer together and create a community interest.

J. C. Deuel, Kirtley, Wyo.

Certainly if county division is good for the people of Platte and Goshen counties, it cannot hurt us, especially when we have no debt to assume.

Ed. Arnold

As a business man, I believe that with the county affairs handled economically as they are sure to be, good results will be achieved.

H. N. Callander

I am going to vote for county division, not for the purpose of raising my taxes but of lowering them. You should do the same.

H. C. Snyder

We will have more money to spend for roads and that is an important thing to us who live in the country. I believe we can have this and still keep the tax rate down.

John C. Sturman

County division will bring the county seat nearer to us up north, thereby saving us money and time when we have business at the seat of government.

L. E. Baltzley

I have always worked for the interests of the dry farmer and strongly favor county division because I believe it will benefit them.

R. C. McCulley

I have no property in Lusk, but am largely interested in land in the east end of Niobrara and believe division will advance the value of land without increasing the taxes.

Geo. H. Voorhees

Division of the county will, in my opinion, greatly reduce the hitherto high cost of criminal prosecutions, by reason of the big reductions in the mileage and expense of officers witnesses and jurors.

Sol J. Weil, Attorney.

Figures Tell the Truth

Figures don't lie unless they are distorted: the following figures are truthful and you know them to be so; they have not been denied by the Manville hired man nor by any one else, and you are requested to look 'em over once more and form your own conclusions. There is no attempt being made to force you to believe something that is impossible; rather we are trying to guard you from misrepresentation and misinformation.

	Converse	Niobrara
Court Clerk	$1,200.00	$ .....
County Clerk	1,800.00	1,200.00
Deputy Clerk	1,000.00	.....
Sheriff	1,800.00	1,500.00
Under Sheriff	900.00	900.00
Treasurer	1,800.00	1,000.00
Deputy	900.00	.....
Attorney	1,500.00	800.00
Assessor	1,500.00	1,200.00
Deputy	600.00	.....
Co. Sup't	900.00	600.00
Commissioners	1,500.00	750.00
Totals	$15,400.00	$7,950.00

How about these? The class the county is in counts for something and the DEPUTY cuts some ice; yes, he cuts into your pocketbook too.

Expense of running Converse county for 1910 $43,381.13

Expense of running Niobrara county for 1913 $15,750.00

This is a little problem in addition or mayhap in subtraction; but

we think the easiest way to solve it is by DIVISION. Try it that way.

Valuation of Niobrara (not less than) four millions. At 4 1-2 mills, the 1910 rate, there can be raised seventeen thousand dollars. We don't need that much, so of course the wise thing for our commissioners to do, is to cut down the levy, and that is just what they will do. All of the above figures point in one way only—to LOWER TAXES and to an economical home government.

Yes—Lusk

She took her little pen in hand
And gripped it tight, I guess,
She wrote the word that sealed her fate;
The mystic word was "YES."

He took her to the polls to vote
And there, I must confess,
Tho' never cross, a cross she wrote
After the one word, "YES."

It was not hard for her to choose
A town for county seat,
The HERALD had expressed her views
Which now it will repeat;

One town of all the candidates
Proves itself re-cher-che,
Each one of them it antedates
It spells L-U-S-K.

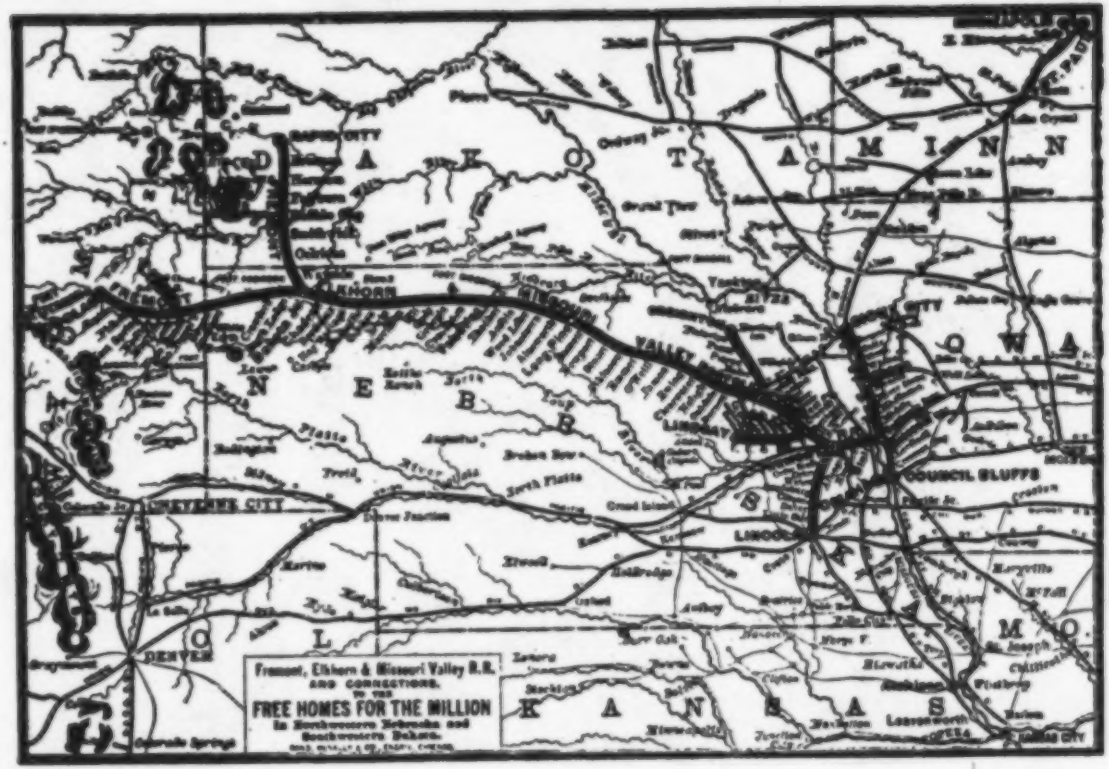
Telling Arguments.

Facts and Figures Which cannot be Refuted Nor Denied.

On Tuesday next, the second day of May, we, the people of the proposed new county of Niobrara, will have the opportunity to determine whether or not there shall be a new county of Niobrara.

The opportune time is at hand for the tax payer to obtain for himself, benefits that will come with the creation of the new county of Niobrara—by this I mean an advantage to the tax payer that is not afforded by any of the counties now asking creation throughout our state. By comparison I call your attention to Laramie county, which today is carrying the Cheyenne and Northern bonded indebtedness to the extent of $337,000.00 of which Goshen and Platte

Intervening Defendant's Exhibit-CC
Reprinted from the Lusk Herald, Feb. 18, 1887



Map of the F. E. & M. V. and Wyoming Central Railroads, Showing how to reach LUSK and the Rich Agricultural, Grazing and Mineral Country in Eastern Wyoming, of which LUSK is the Center.

have assumed their proportionate share. WHICH THE PEOPLE OF THESE COUNTIES ASSUMED AS REASONABLE BY CASTING A MAJORITY VOTE to create these counties at the election held last Tuesday, and Campbell county is seeking admission on a much lesser valuation and population. The proposed new counties in the northwestern part of the state are seeking admission, facing an enormous expenditure, to build roads through their mountains and bridge their rivers and streams, and in one instance a proposition is already up to build a $40,000 court house—but they can see the benefits in spite of all these drawbacks of a new organization.

As to ourselves. We start business with a clean slate. As has been stated elsewhere, our debits and credits with the county of Converse offset one another. Therefore we do not assume a large bonded indebtedness; we have a good, strong valuation and more than a sufficient population. Our county will be a third class county which means a minimum cost of maintenance, as compared with the high cost of maintaining the county of Converse, a first-class county.

Owing to our most favorable geographical situation, we do not face a big outlay of money in the construction of mountain roads and bridging large rivers. We will have excellent roads throughout our entire county at a cost that will scarcely be noticed by the tax payers. We all know what WE have been getting on the road proposition.

Above all, the solid, substantial ranchmen, many of whom come from the remotest part of the proposed county of Niobrara, and the sound, conservative business men of Lusk, who have taken an active interest in county division, have pledged themselves to the people not to build a court house or enter into any unnecessary expenditures for a period of years. This to me, as a taxpayer, means much. I believe in the integrity of these men. I have personally investigated the pro and con of county division. I have carefully watched the statements of our local papers, and I have yet to see the first exaggerated statement in favor of county division.

A glance at the map will convince anyone that Lusk is the logical point for the county seat, it being the most centrally located of any of our towns.

I therefore shall cast my ballot for the creation of Niobrara County, and Lusk as the county seat."

Russell Thorp.

Intervening Defendant s Exhibit-LL
Reprinted from the Lusk Herald Sept 7 1911

Lusk the Metropolis of Eastern Wyoming

The County Seat of Niobrara; a Growing City; Great Shipping Point; Distributing Center for Immense Territory

Situated on the main line of the Chicago & North Western Railroad, with a population of over 600, Lusk is geographically in the center of the county from east to west and easily accessible from any quarter, and is the gateway to an immense territory, the possibilities of which are only being exploited.

Lusk is the largest and oldest town in Niobrara, and its marvelous growth in the last few years is the talk of this part of the State. Its growth has been normal, natural, healthy, and there has been no attempt to "boom" our city.

In her progressive strides, Lusk has not forgotten the matter of the education of the rising and future generations and last year erected one of the finest High and Public School buildings in the State, costing about $35,000, with a corps of capable instructors and an efficient superintendent.

Lusk has two church buildings, Congregational and Episcopal, and it will only be a short time when the Roman Catholics will begin the erection of a place of worship, as they have already secured the ground and the needful funds for the building have been partly subscribed. The Lutheran denomination has a resident missionary here and services are held at stated times, and a Baptist church was lately organized a few miles north-east of Lusk.

Lusk's public hall, owned by the Odd Fellows, is a credit to the town; it has a fine dancing floor and a large and well appointed stage; when the dressing and toilet rooms in the basement have been completed it will be quite up-to-date. There is a fine lodge room on the second floor.

Lusk is the central trading point for an immense territory, ranchmen and farmers from the north coming fifty miles and more for their supplies, and its trade is growing yearly with the development of the district.

There is an unprecedented demand in Lusk for dwelling houses and each succeeding year sees a number erected. Lusk is fast becoming a city of beautiful homes and the owners take pride in keeping their lawns and flower gardens in order, thus adding to the attractiveness of our little city. Over 35 residences and business houses have been built in the last three years.

As will be seen from the advertisements in this issue, Lusk has

her quota of business houses and it can be said of her business and professional men that they are active, alert and progressive.

Lusk has a fine water works system, the water being pumped into two large reservoirs on top of Reservoir Hill, thus insuring ample protection in case of fire.

Lusk has lately installed a sewerage system, which, in conjunction with the unfailing supply of pure cold water, is a safe-guard for the sanitation of the town and health of its people.

A telephone system, with the most modern equipment, is now in operation and connects all parts of the county in one central exchange with facilities for long distance connections.

Lusk boasts of more cement side-walks than any other town in the State of its size, and its streets are tidy and clean. Curbing is being put in on the residence streets and trees adorn the parkings.

The Masonic Fraternity of Lusk has under construction a $20,000.00 building which, when completed, will be a credit to the town. The main floor will be occupied by two store rooms; the second containing offices and a fine lodge with accessory rooms in connection.

Lusk has one of the best hotels along the line of the C. & N. W., the "Northwesters;" its cuisine is unrivalled; it is now being fitted out with bathrooms and other modern conveniences; it is steam-heated and every room is well lighted.

For a town the size of Lusk its Band and Orchestra are second to none, composed entirely of local talent, they put in "their best licks" to attain prominence in the musical world and they surely are succeeding.

Lusk's ball club—the Invincibles—gave a good account of itself during the season just past, only one defeat being recorded against it, which is "going some."

The possibilities in the near future for Lusk are a Creamery and an Electric Lighting Plant, both of which utilities have been discussed by the Lusk Commercial Club.

To sum up, and looking at Lusk from social, business, educational and municipal standpoints, we have a city which is up to date, progressive, a good place to live in, with people who are neighborly and a set of officials whose sole aim is to give the town good government at a minimum cost. With all our improvements and civic works, the bonded indebtedness of the corporation is less than $20,000.00 and the taxes cannot be called burdensome.

NIOBRARA'S RESOURCES

Facts and Figures Concerning Chief Industries of Niobrara County

As a grazing country Niobrara in the years gone by, had a reputation not only state wide but which reached far beyond its confines and Lusk was the principal shipping point for the great herds which were annually shipped east. A transition has come and although the open range has been curtailed, there will always be leasable land for grazing purposes and more cattle will be fed than formerly, so that it is wise to conclude that the chief industries of our county will still be prosecuted. These are cattle and horse raising and wool and mutton growing, and a few figures are subjoined which will give a fair idea of the volume of business in these lines:

1911 Assessment Figures

Total valuation Niobrara County		$3,838,077.00
Cattle	27,107	625,000.00
Sheep	134,625	475,000
Horses	7,001	300,000.00

Shipped out 1910

Cattle	$735,625.00
Sheep	200,000.00
Horses	100,000.00
Wool	204,000.00

The wool clip for this year ran over 1,000,000 pounds, and of this amount about 600,000 pounds were stored in the Lusk Wool Warehouse at one time or another during the season. The proceeds from this year's clip should be between $140,000.00 and $150,000.00 at the prevailing prices.

Dry-farming has been prosecuted with varying decrees of success for over twenty years, principally in the Pleasant Ridge district and in the vicinity of Manville. When rains were seasonable fine crops have been raised, the oats and wheat of the Ridge being superior to anything grown anywhere and potatoes in both of these places surpassing any grown in the east.

It is an established fact that rye, fall wheat, oats and potatoes will bring good results. It is worthy of mention that the exhibit of grains, roots and vegetables from the vicinity of Lusk, at the State Fair last year, carried off the special medal in competition with all the dry farming districts in the state and having as a competitor Dr. Cook, dry farm expert from the State's experiment farm near Cheyenne, with samples of what were grown there.

Intervening Defendant s Exhibit-OO
Reprinted from the Lusk Herald Oct 9 1913

The Lusk Herald

G. C. and A. H. FORSYTHE, Publishers

Published Weekly at Lusk, Wyoming

TERMS

One Year (in advance) $1.50

Entered November 17, 1903 at Lusk, Wyoming, as second-class matter, under Act of Congress of March 3, 1879

THURSDAY, OCTOBER 9, 1913

The tariff bill was signed by President Wilson last Saturday night and one of the promises made by the Democratic party has been faithfully kept. The new tariff will bring lots of good to the masses of the people. The next step will be the passage of a new currency law, also intended to help business men, with limited capital but with large deposits of "honesty."

While our enthusiasm over the success of our first county fair remains and before it has entirely vanished would it not be well to get together and organize for future fairs? Grounds should be arranged for and the matter of erecting a building should be taken up seriously. Let those who were active in the conduct of affairs in the late exhibition call a mass meeting for such purpose.

George W. Dean, a business man of Pittsburgh, Penna., and a lifetime Republican, says business was never better in his home city than it is now and it makes him tired to hear the Republican papers hollering their heads off in a vain endeavor to make the people believe that the country is going to the demnition bow-wows on account of tariff revision. He can't get himself to take stock in such rot.

Niobrara County is the premier dry farming county of the state. In an address delivered last Thursday at the State Fair, Governor Carey made particular mention of Niobrara and Washakie counties, two of the new counties of the state. He regretted the absence of exhibits from some of the counties, and the rather poor showing made by others that could have done better, but there may be a

good reason for this. Many of the county fairs take place about the same time as the State Fair, and as there is a great deal of work connected with the collection and display of the products, it may be that those having charge of the work for their county fairs did not have the time to prepare for the State Fair. Niobrara county has the proud distinction of taking first premiums over stuff raised by irrigation. Farmers, keep a-going! That price of $25.00 per acre made in the late Russell sale may be a minimum price before long. Who knows!

1980 COMMUNITY PROFILE - TORRINGTON, WYOMING
Elevation 4,098 Feet

Population

	City	County
1970	4,237	10,885
1975	4,667	11,400
1979 (est.)	6,293	15,286

Recreation

6 Recreational Parks
Medicine Bow National Forest
Baseball, tennis, golf, swimming, fishing, snowmobiling, rodeos

Geographical

Torrington is located in Goshen County in southeastern Wyoming. The county covers an area of approximately 2,232 square miles of prime agricultural land.

Climate

Mean daily maximum temperature in:
January 40.9° July 89.3°
Mean monthly temperature in:
January 16.6° July 71.3°
Mean annual precipitation: 14 inches
Mean annual snowfall: 55 inches
Average annual wind velocity: 11 mph
Average annual relative humidity: 61%
Average growing season: 148 days

Resources

Minerals: Oil
Agriculture: Sugar beets, corn, potatoes, beans, alfalfa, oats, barley, wheat

Municipal Data

Government: Mayor - Council System
Police Force: 13
Sheriff's Office: 4
Fire Department: 40 man volunteer unit
Insurance Rating: 7
City Limits: 1,114 acres
Zoning: Act Administered by Planning Commission
Streets: 90% paved, all have gutters, 90% have sidewalks

Housing

	County
Single Family Units	3,722
Multi-Family Units	400
Mobile Homes	700

Estimated cost of a new 3-bedroom home, 1,100 sq. ft., unfinished basement, 1-car garage: $63,000

Average monthly rental, 3-bedroom home: $300-$400

Average monthly rental, 1-3 bedroom apt.: $250

Church

Protestant - 13, Catholic - 1, LDS - 1

Education

	Schools	Pupils
High School	1	517
Jr. High School	1	359
Elementary Schools	1	787
Other (Parochial)	1	63

Total Expended Per Pupil: $1,800

Ratio of Pupils/Teachers: 15:1

Eastern Wyoming College 740

Libraries: 2 (incl. college) Volumes: 56,854

Medical

Doctors: 8 Dentists: 4

Community Hospital: 56 beds

Goshen County Nursing Home: 71 beds

Media

Newspaper: Torrington Telegram, bi-weekly circulation, 3,500

Radio: KGOS AM, KERM FM

Television: No local station. 8 channels available with Cable

Accommodations

Motels: 11 Rooms: 167

Convention Facilities: 7

Room Capacities: 500, 400, 200 (three largest)

Business

Number of Retail Establishments - County: 101

Number of Wholesale Establishments: 34

Net Collection of Retail Sales Tax, FY'79: $1,223,685.51

Banks: 2
Total Deposits: $72,062,158.70
Total Assets: $79,776,756.14
Savings and Loans: 2
Total Assets: $35,000,000

Tax Structure

Wyoming has no state, personal or corporate income tax.

Assessed Valuation—
City: $9,428,205
County: $40,425,064

Property Taxes Levied—
City: $811,118
County: $3,279,042

Tax Levy (Mills)—
City: 86.031
County: 22.500

Bonded Indebtedness FY'79—
City: $350,000
School: $3,607,000

Sales Tax Rate: 3%

Sales Tax Collected FY'79—
County: $1,794,073.30

Sales Tax Distributed Back FY'79-
City: $258,676.89
County: $348,935.12

1979 minerals assessed valuation subject to severance and ad valorem taxes based on 1978 production is: $120,608.

Ratio of assessed valuation to true value for 1979 is approximately 8-10%.

Transportation

Highways:
US 85 and 26; State 156 and 159
Railroads:
Burlington-Northern
Union Pacific
Motor Freight Carriers:
West Nebraska Express
Hamilton Transfer
Air Service:
Torrington Municipal Airport. 2 runways, 2,800 and 5,200 feet, both asphalt
Charter Service:
Aviation Associates
Commercial Service:
Available in Cheyenne (84 miles) or Scottsbluff, Nebraska (35 miles)
Bus Service:
Trailways

Utilities

Municipal Water Source:
North Platte River and wells
Source capacity: 14.5 million gal/day
Peak demand: 2.5 million gal/day
Storage capacity: 350,000 gallons
Rates: First 5,000 gal. $3.00
Each additional 1,000 .25¢ winter, .13¢ summer

Sewage System—
3-Cell Lagoon Facility
Capacity: Will serve 6,000
Rates: (residential and commercial) $2.50/mo.

Refuse Disposal—
Method: Sanitary landfill
Rates: Residential - $5.00 month
Commercial - $10.00 month

Natural Gas—
Supplier: Kansas-Nebraska Natural Gas
Rates: General

First 10,000 cu. ft.	$3.22
Next 40,000 cu. ft.	.22719 per ccf
Next 450,000 cu. ft.	.20519 per ccf
Next 500,000 cu. ft.	.19619 per ccf

Electric Power—
Supplier: Bureau of Reclamation
City operates distribution system with five substations
*Rates - Residential

	per kilowatt
1st 15 kwh or less	1.075
Next 35 kwh	.055
Next 50 kwh	.039
Next 200 kwh	.03
Next 200 kwh	.025
Add'l over 500	.0245
Commercial	
First 100 kwh	.05
Next 200 kwh	.0475
Next 200 kwh	.0404
Next 1,000 kwh	.035
Add'l over 1,500	.025

*Other rate schedules are available.

Labor Market Analysis

1978 Per Capita Income - County: $6,888
(source: BEA, Regional Economic Information System)

County Labor Force -
1979 Annual Average: 6,096
Male: 4,148 Female: 1,948
Unemployment - 1979 Annual Average: 169
Male: 96 Female: 73
Unemployment Rate: 2.8%

Distribution of Labor Force-3rd Quarter 1979: Covered Employment

	No. Firms	No. Emp.
Mining & Construction	51	382
Manufacturing	14	278
Trans., Comm., & Utilities	24	191
Wholesale Trade	34	302
Retail Trade	101	726
Finance, Ins., Real Estate	22	108
Services with Agriculture, Forestry and Fisheries	87	1,181

Average Weekly Wage Rates:	County	State
Mining	$264.83	$427.09
Construction		336.04
Manufacturing	218.17	292.18
Trans., Comm., & Utilities	250.61	334.91
Wholesale Trade	173.62	300.89
Retail Trade	128.22	147.92
Finance, Ins., Real Estate	203.21	227.15
Services with Agriculture, Forestry & Fisheries	133.37	178.88
Average of All Categories	196.00	280.63

Industry

Agriculture, Manufacturing

Major Employers

	Product	Emp.
Holly Sugar Co.	Sugar Refinery	300
Simplot Soilbuilders	Fertilizer	10
Torrington Cement Co.	Cement	20
John Rueb Assoc., Inc.	Hides, Rendering	40
Farr-Wyoming Co.	Processed Beans	60
Z & W Mill	Grain & Feed	20

Available Industrial Properties

City owned industrial park adjacent to rail facilities. Contact Chamber of Commerce.

Cultural Attractions

Homesteader Museum
Oregon Trail Ruts
Register Cliff
Art Exhibits and Community Concerts

Further Information

Torrington Chamber of Commerce
350 West 21st St.
Torrington, WY 82240 (307) 532-3879

Industrial Development Division - DEPAD
Barrett Bldg.
Cheyenne, WY 82002 (307) 777-7284

Sources — State of Wyoming, Departments of: Revenue and Taxation, Administration and Fiscal Control, Division of Research and Statistics, Employment Security Commission, State Examiner, Wyoming Taxpayers Association, Chambers of Commerce.

Intervening Defendant's Exhibit QQ

1980 COMMUNITY PROFILE - LUSK, WYOMING

Elevation 5,015 Feet

Population

	City	County
1970	1,800	2,924
1975	1,628	2,895
1979 (est.)	1,753	3,101

Recreation

2 city parks with tennis courts and baseball fields. City golf course. Swimming, fishing, hunting, snowmobiling, horseback riding, rodeo.

Geographical

Lusk is the county seat of Niobrara County, located on the eastern border of the state. The county covers a total of 1,663,516 acres and 2,599 square miles.

Climate

Mean daily maximum temperature in:
January 37° July 84°
Mean monthly temperature in:
January 22.8° July 70°
Mean annual precipitation: 15 inches
Mean annual snowfall: 47.8 inches
Average annual wind velocity: 9 mph
Average annual relative humidity: 50%
Average growing season: 137 days

Resources

Minerals: Oil and gas
Forest Land: 17,399 acres
Agriculture: Hay, wheat, oats, barley, cattle and sheep

Municipal Data

Government: Mayor - Council System
Police Force: 6
Sheriff's Office: 2
Fire Department: 24 man volunteer unit
Insurance Rating: 8
City Limits: 640 acres
Zoning: Act Administered by Planning Commission
Streets: 75% paved; 25% have sidewalks and gutters

Housing

	County
Single Family Units	1,050
Multi-Family Units	20
Mobile Homes	87

Estimated cost of a new 3-bedroom home, 1,100 sq. ft., unfinished basement, 1-car garage: $45,000

Average monthly rental, 3-bedroom home: $250

Average monthly rental, 1-3 bedroom apt.: $150

Church

Protestant - 7, Catholic - 1, LDS - 1

Education

	Schools	Pupils
High School	1	214
Jr. High School	1	126
Elementary Schools	1	234

Total Expended Per Pupil: $1,739
Ratio of Pupils/Teachers: 15:9
Eastern Wyoming Community College in Torrington (57 miles) 740
Libraries: 1 Volumes: 23,000

Medical

Doctors: 2 Dentists: 1
Niobrara Memorial Hospital, 12 beds
Nursing Home, 36 beds

Media

Newspaper: Lusk Herald, weekly circulation, 3,000
Radio: No local stations. All channels available
Television: No local station. All channels available with Cable

Accommodations

Motels: 6 Rooms: 160
Convention Facilities: 2 Room Capacities: 125, 250

Business

Number of Retail Establishments - County: 60
Number of Wholesale Establishments - County: 8
Net Collection of Retail Sales Tax - County: $295,024.35
Banks: 2 Total Deposits: $24,739,000

Tax Structure

Wyoming has no state, personal or corporate income tax.

Assessed Valuation—
City: $3,275,082
County: $25,479,644

Property Taxes Levied—
City: $215,750
County: $1,566,090

Tax Levy (Mills)—
City: 65.876
County: 20.876

Bonded Indebtedness—
City: $220,000

Sales Tax Rate: 4%

Sales Tax Collected—
County: $550,056.42

Sales Tax Distributed Back to—
City: $138,585.90
County: $121,971.14

1979 minerals assessed valuation subject to severance and ad valorem taxes based on 1978 production is: $9,515,764.

Ratio of assessed valuation to true value for 1979 is approximately 8-10%.

Transportation

Highways:
US 85, 18 and 20
Railroads:
Chicago & Northwestern
Motor Freight Carriers:
Briggs Transportation
Ross Transfer
Salt Creek Freightways
Transcon Lines
Air Service:
Lusk Airport, 4,734 feet of asphalt
Charter & Commercial Services available in Casper (104 miles)
Bus Service:
Trailways, Inc.

Utilities

Municipal Water Source:
Wells - 5
Source capacity: 2.2 million gal/day
Peak demand: 2.2 million gal/day
Storage capacity: 440,000 gallons
New wells presently being drilled
Treatment: None required
Rates: 10,000 gal. - $2.50 and $.15/1,000 gal. thereafter

Sewage System—

Sewage treatment: Aeration disposal system. Plans presently underway to expand sewage system

Rates:

Residential - $.75/mo.

Commercial - $1.00 min. or ¼ of monthly water charge

Refuse Disposal—

Method: Sanitary landfill

Charge: $1.50/mo. (residential); Commercial varies

Natural Gas—

Supplier: Kansas-Nebraska Natural Gas Company, Inc.

*General Rates

cu. ft./mo.	per Mcf
First 1,000	$2.05
Next 4,000	1.15
Next 45,000	.90
Next 50,000	.75
Over 100,000	.70

Electric Power—

Supplier: Town of Lusk

*Rates - General

kwh per mo.	per kwh
First 50	10¢
Next 50	9¢
Next 200	3.5¢
Next 700	2.3¢
Over 1,000	2.0¢

*Other rate schedules are available.

Labor Market Analysis

1978 Per Capita Income - County: $9,385
(source: BEA, Regional Economic Information System)

County Labor Force -

1979 Annual Average: 1,324

Male: 866 Female: 458

Unemployment - 1979 Annual Average: 33

Male: 14 Female: 19

Unemployment Rate: 2.5%

Distribution of Labor Force-3rd Quarter 1979: Covered Employment

	No. Firms	No. Emp.
Mining	7	39
Construction	11	39
Manufacturing	5	42
Trans., Comm., & Utilities	7	31
Wholesale Trade	7	39
Retail Trade	27	180
Finance, Ins., Real Estate	7	32
Services with Agriculture, Forestry and Fisheries	26	201

Average Weekly Wage Rates:

	County	State
Mining	$280.10	$427.09
Construction	279.92	336.04
Manufacturing	160.73	292.18
Trans., Comm., & Utilities	321.67	334.91
Wholesale Trade	115.24	300.89
Retail Trade	139.14	147.92
Finance, Ins., Real Estate	152.99	227.15
Services with Agriculture, Forestry and Fisheries	148.98	178.88
Average of All Categories	199.85	280.63

Major Industries

Agriculture, Refinery

Major Employers

	Product	Emp.
C & H Refinery	Gas	9
Ranchers Feed Products	Animal Feed	11
Vollmer Machine Shop	Mfg. Leaf Springs	12
Don's Fireplace & Furnace Factory	Stoves	6

Available Industrial Properties

City owned—165 acres adjacent to rail facilities and highway access. Fire protection by city.

City owned—80 acres, rail and highway access, fire protection by city.

Cultural Attractions

Niobrara County Fair
Stagecoach Museum
Limestone Fossil Beds
Lusk Opery House Melodrama

Further Information

Niobrara County Chamber of Commerce
Box 125
Lusk, WY 82251 (307) 334-2398

Industrial Development Division - DEPAD
Barrett Bldg.
Cheyenne, WY 82002 (307) 777-7284

Sources -- State of Wyoming, Departments of: Revenue and Taxation, Administration and Fiscal Control, Division of Research and Statistics, Employment Security Commission, State Examiner, Wyoming Taxpayers Association, Chambers of Commerce.

HISTORICAL ENCYCLOPEDIA OF WYOMING

NIOBRARA COUNTY HISTORY

By Mae Urbanek

Three flags have flown over the land that is now Niobrara County —those of Spain, France, and the United States. It has been part of six territories—Louisiana, Missouri, Nebraska, Idaho, Dakota, and Wyoming; and of two other counties—Laramie and Converse, from which it was split in 1911. The "east-enders" objected to the long trip to Douglas, county seat of Converse County. Harry C. Snyder and E. B. Willson led the action to divide the county. Mr. Snyder suggested the name Niobrara. Lusk was chosen county seat at a special election. Governor Carey appointed E. B. Willson, Albert Rochelle, and Thomas H. Thompson as the first county commissioners.

Although most of Niobrara County is treeless prairie, a ridge of pine and cedar-covered hills known as the "Breaks" runs from east to west through the south central part. These Breaks make a climatic division. To the south deep snows fall and rich grasses grow in the sandy soil. This is one of the best dry farming areas in Wyoming and grows heavy crops of summer-fallowed wheat. North of the Breaks the land, a thousand feet lower in altitude, is gumbo type and receives less moisture. Winters are usually open, allowing grazing of short, nutritious grasses. Average rainfall of the county is 15.13 inches. It contains 2613 square miles, with an estimated population in 1966 of 3720. Assessed valuaton in 1965 was $15,592,508 and the major source of income was agriculture.

Like most of Wyoming, Niobrara County was an ocean millions of years ago. As the Rocky Mountains rose, part of the water drained away, leaving tropical marshes with dense vegetation. Huge dinosaurs feasted and fought where sheep and cattle now graze. Again and again the buckling earth heaved up the land. Prehistoric animals trapped in mud and covered with volcanic ashes were preserved as fossils. Northern Niobrara County is a treasure chest of petrified skeletons of dinosaurs, dawn-horses, small camels, rhinoceroses, saber-toothed tigers, and oreodons. There in 1907 George Sternberg, a noted fossil hunter, found the world's oldest mummy, a duck-billed dinosaur with shrunken skin, well-preserved, the only dinosaur skin ever found. The specimen is now in the American Museum of Natural History in New York. Recently, on a tributary of the Cheyenne River, Lou Bass, of Lusk, found a bone from a Triceratops dinosaur, a three-horned monster of the Mesozoic age. Some of these Niobrara fossils are in the museum

at the University of Wyoming; some at the School of Mines in Rapid City, South Dakota; but most of them are in eastern museums.

Probably the first organized industry in Wyoming took place in Niobrara County about ten thousand years ago at what are now known as Spanish Diggings. These prehistoric quarries or pits, dug thirty feet deep into solid rock with only stone tools, were misnamed by early cowboys who thought Spanish adventurers had dug there for gold. But Spaniards never came as far north as Wyoming. Smithsonian Institution scientists investigating the Diggings judged their age by lichen growths on discarded rocks. Crude digging and hunting tools were chipped from the lavender and golden quartzite dug from the pits. Tepee rings and chipping sites also spread into Goshen and Platte Counties.

Indians named the river that rises as a stream west of Lusk. The name was first written in a government treaty with Pawnee Indians in 1853. "Ni" was their name for water; "obthatha" for spreading; which became in white men's language, Niobrara. In early days the Niobrara River was also called Running Water.

Lusk has long been at the crossroads of transcontinental trails. Gold was discovered in the Black Hills of South Dakota in 1874. Indians fought the invasion of gold-crazed prospectors flooding into the land promised to the Indians "as long as grass shall grow and water flow" in the Fort Laramie Treaty of 1868. Captain Egan was sent with troops from Fort Laramie in 1875 to build a fort on Hat Creek in Nebraska. Wandering in the unmarked wilderness, they built their log fort on Sage Creek in Wyoming, naming it Fort Hat Creek. A tunnel connected the fort to Sage Creek, so water could be obtained in time of siege. This fort is about twelve miles northeast of Lusk. In the early eighties John Storrie and Tom Swan erected a large two-story log building where the old fort was. This building is still standing.

Luke Voorhees, an experienced frontiersman, was superintendent of the new Cheyenne and Black Hills Mail and Express Company in 1876. He located stations for changing horses about every eighteen miles. The trail ran west of Rawhide Buttes. The stone barn on Running Water, near present-day Lusk, was one of the stations. From Fort Hat Creek the route led north across Cheyenne River near the famous holdup spot, Robbers Roost. When road agents and Indians made this long stretch north of Hat Creek especially perilous, the route was shifted east through Indian Creek country. When Russell Thorp, Senior, bought the stage line in 1883, he made the Rawhide Station, now the Ord Ranch, his headquarters. Hat Creek, at the end of the telegraph line, became a well-

developed station with stores, blacksmith shop, and even a brewery.

Traffic to the gold mines of Deadwood was heavy: prospectors, gamblers, promoters, highjackers, and adventurers. Of these Calamity Jane and Wild Bill Hickok were the most famous. Gold bricks were transported to the Cheyenne railroad in steel salamanders bolted to bullet-proof coaches. Guards rode shotgun on the boot of coaches drawn by fast tandem teams of six horses. Long string teams of oxen were used to freight goods over rutted roads. These ruts may still be seen in the butte rock north of Lusk. George Lathrop and Fred Sullivan were drivers of the stagecoaches. Lathrop had the honor of "holding the ribbons" when the stage made its last trip in 1887. One of the stagecoaches is now in the Lusk Museum. George Lathrop is buried two miles west of Lusk, where a monument marks his grave.

Off to the west of the road running south of Lusk are the few remains of what was a tavern. It was nothing more than a dugout affair which was operated in the late 70s by a character known as Mother Featherlegs. The late Dr. Walter Reckling wrote before his death: " 'Mom Featherlegs' was quite the old biddy, if one is to believe the history in Agnes Wright Spring's book, 'Cheyenne and Black Hills Stagecoach Routes,' put out by the Arthur Clark Company of Glendale, California, in 1949. Russell Thorpe, Jr., tells me (Dr. Reckling) that he gave Mrs. Spring the information on Mom Featherlegs. Russell's father was one of the operators of the famous stagecoach line which operated until better means of transportation was found. Russell, Jr., spent time in the summer at his father's ranch which is the present Ord Ranch. As a child with lots of native curiosity, he and a playmate dug into Mom's grave to flee in terror when the first object to appear in the opened casket was her flaming red hair.

"Mrs. Spring tells how Mom was a mother to a couple of famous southern outlaws who flourished following the Civil War. These sons were caught and hanged by the authorities. Mom lost her life by means of a bullet." A state monument now marks her grave.

Following the Civil War there were too many cattle in Texas. Cowboys moved huge herds of longhorns north from Texas to railroad centers and to pastures along the Texas Trail, which crossed the Cheyenne-Deadwood route at the present location of Lusk. John B. Kendrick, later U.S. Senator from Wyoming, drove cattle to Montana up this trail in 1879. He said he traveled more than four hundred miles between Fort Worth, Texas, and Silver Cliff, now Lusk, without seeing a barbed wire fence. A Texas Trail monu-

ment is a few miles east of Lusk. Now U.S. Highway 85, running from Canada to Mexic.., and 20, an east-west artery of travel, cross on the main street of Lusk.

In 1880 a prospector named McHenry passed through and liked the looks of a large hill where Lusk now stands. Outfitted with supplies and two helpers he started work on the hill, named Silver Cliff. Miners living in tents worked the hill for four years, taking out considerable ore—copper, silver, and gold. A New York company financed the mine. When their checks to the miners proved worthless, the enterprise folded up. In 1918 the first uranium in Wyoming was detected in the abandoned shafts of the old Silver Cliff hill. It was not in sufficient quantity to develop.

Three-hundred-mile trips to Cheyenne and back for beans, salt pork, and other necessities of like ended on July 13, 1886, when the Fremont, Elkhorn and Missouri Valley Railroad, now the Northwestern, arrived. Officials offered to buy the land where Silver Cliff stood from Ellis Johnson, but his price was too high. Frank Lusk donated the land to the east, and railroad officials laid out the townsite of Lusk, named in his honor. The present old Free Lance building and tents were quickly moved from Silver Cliff to Lusk. Residents greeted the railroad with a big celebration and driving of a spike made from local silver and copper. The mines in Muskrat Canyon to the south of Lusk furnished the copper.

Other Niobrara towns were spawned by the coming of the railroad. To the east of Lusk, Van Tassell was named by railroad officials for Schuyler Van Tassell, a pioneer rancher with large holdings. There on June 28, 1919, was organized one of the first four American Legion Posts in the United States: Ferdinand Branstetter Post No. 1, named for a resident of Van Tassell who was one of the first to die on the battlefields of France. Manville, ten miles west of Lusk, was named for H. S. Manville, organizer of Converse Cattle Company in 1880. Keeline was named for George A. Keeline, owner of 4 J Ranch.

The last killing in the Johnson County War took place north of Keeline in the fall of 1893. Charlie Hitshew was cleaning a meadow on the Horseshoe Ranch when he heard a shot and saw a riderless horse running in circles. He caught the horse and found its rider, a young man, dead. Meanwhile the killer, Mike Shonsey, went to Lum Barber, the Lusk sheriff, and gave himself up, claiming that Dudley Champion, brother of Nate Champion, had drawn first and that he shot in self-defense. Released by the sheriff and a hastily called court, Shonsey lost no time in fleeing to Mexico.

It was supposed that Shonsey had feared the brother of the murdered Nate Champion, and waylaid and shot him.

The last armed engagement between Sioux Indians and white men took place in Niobrara County on Lightning Creek in the fall of 1903. A group of Indians had been given permission to leave the Pine Ridge Reservation in South Dakota to go on their annual hunt. Controversy arose between ranchers who claimed Indians were killing cattle and the Indians who said they were only hunting antelope and deer. Led by Sheriff Miller of Newcastle, ranchers attacked the entrenched Indians at Lightning Creek. Sheriff Miller and men on both sides were killed in a bloody battle. The Indians fled back to the reservation. Some squaws were wounded. At a hearing in Douglas no action was brought against the Indians, the feeling being that they had been unlawfully attacked.

In 1907 Reverend George Dalzell conceived the idea of a preparatory college sponsored by the Christian Church of Ohio on his homestead between Manville and Keeline. In the spring of 1908 many educated pilgrims staked out their homesteads near his, and plotted the town of Jireh, "The Lord will provide." There in the fall of 1910 in a large frame building opened Jireh College, the first junior college in Wyoming. Appropriations for an experiment farm in connection with the college were passed by the state legislature in 1911. In its peak year the college had sixty-five students. Years of drought set in and homesteaders moved away; high schools were started in Keeline and Manville, and the college closed in 1920. A historical marker on U.S. Highway 20 is near the site of this first mirage of culture on the sage-sprinkled prairies.

A strong flow of gas from three test wells in Cow Gulch in 1917 heralded the Lance Creek oil boom. The Union Oil Company of California leased twenty thousand acres between Buck Creek and Twenty Mile Creek. A rotary drill, tons of casing, pipe, and machinery were unloaded in Lusk and Manville and hauled by horses and trucks to the new field. Within a year twenty-five rigs were operating. Ohio Oil Company opened as a big producer in 1918. Rigs and camp equipment were rushed to mushrooming Lance Creek. In four days 555 tons of freight were moved from Lusk alone. A refinery was built and pipe line laid to the railroad. A big gusher came in with two thousand barrels of oil in the first few hours. Derricks were everywhere. When shallow wells weakened, drilling deepened. The Lance Creek Field was first in oil production in Wyoming from 1939 to 1945. It is still producing, and wells to the north and east of Lance Creek are being brought in.

For years the highlight of the summer season in Niobrara

County was the presentation in Lusk of the pageant, "Legend of the Rawhide," which more than two hundred rural and urban people dramatized in costume. The legend instigated by Dr. Walter E. Reckling and written by Eva Lou Bonsell was first enacted in 1946. It had many scenes portraying life in an Indian village; life and stuggles of emigrants in a covered wagon train in 1849; the shooting of an Indian maid; an Indian attack on the encamped wagon train; a burning wagon; and the skinning of a man alive by the Indians. The story of the pageant was based on a legend about the naming of the Rawhide Buttes to the south of Lusk. It was presented for the 27th and last time in 1965.

Since the flow of oil in the Lance Creek Field has tapered off, much of the county income is derived from cattle and sheep. Joe Pfister has won national recognition for his Columbia sheep and their fleeces. There is a strong 4-H Extension program, promoted by Lusk businessmen. The Niobrara 4-H livestock judging team, coached by Si West, county agricultural agent, won the national livestock judging championship in 1949. Livestock judging teams from Niobrara County have won seven state championships and six reserve championships. While young people learn by working, they also have good times together at parties and at camp in Mallo Canyon, Weston County.

Politically, Frank A. Barrett, a Lusk lawyer, has been Niobrara's most important citizen. He was elected U.S. Representative from Wyoming in 1942 and re-elected in 1946; was governor of Wyoming, 1951-53; and U.S. Senator from 1954 to 1958. A conscientious worker and efficient administrator, he never let the sun go down on an unanswered letter.

Winners of firsts from the county were Dorothy Evelyn DeGroot, who was Miss Wyoming in 1930; Carol Jean Held, Miss Wyoming in 1950; Mrs. James Berry, Mrs. Wyoming in 1966. Mrs. Berry was runner-up in the national contest and became Mrs. United States Savings Bond, traveling the nation to promote sales of bonds. Niobrara County has a large number of artists. Most exceptional are paintings of Mrs. Mattie Thompson, in her early sixties, self-taught painter with a primitive style similar to Grandma Moses. Elsie Christian, another artist of western landscapes, helped Mrs. Thompson develop her talent. Berniece Bird, also gifted in protraying western scenes in vivid colors, painted her first picture of a dog on sheepwagon canvas when she was eleven.

A recent development in Niobrara County is pump irrigation, utilizing a vast underground water table with automatic sprinkler systems. As early as 1946 N. V. Lamb started irrigating near

Manville. In 1969 more than 33 wells were irrigating approximately 3200 acres on 18 ranches. Sugar beets, alfalfa, beans, potatoes, corn, small grains, and crambe, an industrial crop used in the manufacture of plastics, are being successfully raised, and pastures irrigated. The Natural Resource Board of Wyoming keeps a check on the water level in each well so that the water table is not lowered to a harmful depth.

People of the county are proud of their children, their schools, and their churches. A high school with a large gymnasium and auditorium encourages athletics and productions of difficult dramas and musicals, such as "The Sound of Music." Music is especially stressed. The Lusk High School Band has won many honors. Lusk athletes are state-wide winners in wrestling and basketball. A new Memorial Hospital has been constructed. The large surrounding grounds have been landscaped by local organizations.

Swimming at the newly constructed Lusk pool, golf at the Niobrara Country Club, rock hunting in its Fairburn agate fields, square dancing, and bridge games are some of the recreations available in the county. To quote from Lusk Woman's Club pamphlet: "The relative isolation characteristic of the area has proven to be its strength, for it forces its people into resourcefulness, producing a vigorous, individualistic, yeasty breed of participants rather than spectators."

FILED
AUG 30 1982
ALEXANDER L. STEVAS

No. 82-49

In The

Supreme Court of the United States

OCTOBER TERM, 1982

MARGARET R. BROWN, et al.
Appellants,
v.
THYRA THOMSON, as Secretary of the State of Wyoming
et al, Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF WYOMING

MOTION TO AFFIRM

August 24, 1982

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State of Wyoming

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123 Capitol Building
Cheyenne, Wyoming 82002
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QUESTION PRESENTED

Does the 1981 apportionment of the Wyoming House of Representatives apportioning, inter alia, one seat to the residents and voters of Niobrara County create invidious discrimination against the Appellants and other residents of Wyoming in violation of the Fourteenth Amendment to the Constitution of the United States?

PARTIES TO THE PROCEEDINGS

Additional defendants in the district court were:

Ed Herschler, Thyra Thomson, Shirley Wittler and James B. Griffith, as members of the State Canvassing Board, and Ed Herschler, as Governor of the State of Wyoming.

Intervening Defendants in the district court were:

James L. Thompson, Gerald D. Bardo, Russell Thompson, Kenneth A. Gropp, Richard G. Pfister, Peter M. Hansen, Gertrude Chamberlain, Betty Percival, Mary L. Burke, Board of County Commissioners of the County of Niobrara, Kenneth R. Freeman, as a County Commissioner of the County of Niobrara and in his individual capacity, F. Everett Brooks, as a County Commissioner of the County of Niobrara and in his individual capacity, and Louis L. Landkamer, as a County Commissioner of the County of Niobrara and in his individual capacity.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

No. 82-65

MARGARET R. BROWN, et. al,
Appellants,
v.
THYRA THOMSON, as Secretary of the
State of Wyoming, et. al,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF WYOMING

MOTION OF APPELLEES THYRA THOMSON, ED HERSCHLER, SHIRLEY WITTLER AND JAMES B. GRIFFITH TO AFFIRM

Appellees, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, respectfully move that the order and decision of the district court be affirmed on the ground that the question is so insubstantial as not to warrant further argument.

OPINION BELOW

The opinion of the district court is reported at 536 F.Supp 780 (1982).

STATEMENT

Appellants challenge the 1981 Wyoming House reapportionment as being repugnant to the Fourteenth Amendment. The case involves political questions. There were disagreements among legislators as to the reapportionment of Wyoming's legislature following the 1980 census. Such disagreements are, of course, common and natural events. One disagreement during reapportionment debates centered upon whether Niobrara County in eastern Wyoming should elect one of 64 representatives or should be joined with another county; Niobrara County was apportioned a representative. Following the Governor's signing of a reapportionment bill in 1981, seven Wyoming voters brought this action. These voters did not claim standing as members of any discrete and insular minority; rather, they claimed standing as seven out of 192,510 registered voters from all Wyoming counties except Niobrara County. The plaintiffs urged that they have been invidiously discriminated against by the apportionment of one representative to Niobrara County.

By official census results, Wyoming's 1980 population was 469,557, and Niobrara County's population was 2,924. Niobrara County, one of 23 Wyoming counties, is rural, economically depressed and its population is isolated from its neighbors by a large expanse of open prairie.

Niobrara County has been representated by one member of the Wyoming House of Representatives at all times since the county was created in 1913. The county has shared one senator with larger Converse County since 1965. In 1981, the Wyoming legislature reapportioned both of its houses in accordance with changes in population distribution as shown in the 1980 census. Niobrara County was combined with Goshen County, its neighbor to the south, to form one Senate district. One Representative was apportioned to Niobrara County, and 63 representatives were apportioned among the residents of the remaining 22 counties.

The legislature reapportioned both the Senate and the House on the basis of population. Niobrara County's population remained constant between the 1970 and 1980 census while the population of most Wyoming counties increased. The legislature, aware of this fact, considered several alternatives to assure meaningful representation of the residents of all counties, including Niobrara County, in the House of Representatives. The legislature determined that a population formula should be used for apportionment of 63 representatives to 22 counties. It was further determined that even though Niobrara County contained fewer people, as measured by the census, than any other county, the county's residents should nonetheless be guaranteed an effective voice in the Wyoming House. Niobrara County's residents were therefore apportioned a single representative through a modification of the population formula.

Appellants complained to the district court that this legislative judgment works an invidious discrimination against them, and that the preservation of Niobrara County's representation dilutes their votes to an unconstitutional degree.

The district court heard the plaintiffs' complaints during a two-day hearing in March, 1982. The court found that the injuries complained of by the plaintiffs are de minimis. The court found a rational basis for Wyoming's apportionment and further found that the plaintiffs did not prove a prima facie case of discrimination. No evidence offered by the plaintiffs was excluded. The complaint was heard and dismissed.

ARGUMENT

THE QUESTIONS PRESENTED ARE INSUBSTANTIAL

A. APPELLANTS (PLAINTIFFS) DID NOT PROVE INVIDIOUS DISCRIMINATION

1. Introduction

Appellants complained in the district court that apportionment of a representative to Niobrara County will discriminate against them as voters and residents. Appellants were unable to show the court that this "discrimination" is in any manner significant. The testimony before the court revealed the discriminatory effect to be theoretical and insubstantial.

The court reviewed comprehensive statistical analyses of Wyoming's apportionment of representation. Several important conclusions were revealed. It was shown by uncontroverted evidence that no substantive changes in apportionment of the House have occurred since the 1960's. This is important because some 1,800 Wyoming residents participated in a challenge to Wyoming's Senate and House apportionments in 1964. The U.S. District Court for Wyoming revised the Senate apportionment and approved the House apportionment in 1965. *Schaefer v. Thomson,* 251 F.Supp. 450 (1965).

This decision was affirmed by the U.S. Supreme Court, *Harrison v. Schaefer,* 383 U.S. 269 (1966). The district court found in 1982 that no substantial changes in the House apportionment have occurred since the Supreme Court's affirmance in 1965. *Brown v. Thomson,* 536 F.Supp. 780 (D. Wyo. 1982).

2. Vote Dilution is De Minimis.

The district court found that the preservation of Niobrara County's representative in 1982 and thereafter would not cause any significant dilution of the voting power of any of the appellants. *Brown v. Thomson, supra* at 783. Stipulated exhibits show that the percentage of registered voters within the counties in which each of the appellants resides correlates closely with the percentage of House seats apportioned to each of those counties.

County	Percentage of Voters	Percentage of Seats
Albany	6.47	6.25
Campbell	4.27	4.69
Carbon	4.26	4.69
Fremont	7.49	7.81
Laramie	15.52	14.06
Sheridan	5.91	4.69
Teton	3.03	1.56
TOTALS	46.95	43.75

(From Ex. A-602, *Brown v. Thomson*)

The same principle holds true with respect to population figures. 46.3 per cent of Wyoming's population resides in these seven counties which will elect 43.75 per cent of the representatives. As the district court observed, there is nothing unfair nor invidious about the distribution of political influence.

3. Representation is Proportionate to Population.

Another statistical approach examined by the district court shows that the plan approved by the court does not constitute a substantial departure from principles stated repeatedly by this Court.

Many reapportionment plans have been disapproved by federal courts because they would have allowed a minority of residents to dominate the

legislative process. For example, the Wyoming Senate apportionment of 1963 would have allowed 24 per cent of the population to elect a majority of the Senate. Clearly such a malapportionment fosters invidious discrimination. This Court has stricken plans allowing election of a legislative majority by 19 per cent, *Reynolds v. Sims*, 377 U.S. 533, 547, 565; 22 per cent, *Roman v. Sincock*, 377 U.S. 695, 707-708, 35 per cent, *WMCA v. Lomenzo*, 377 U.S. 633, 647-648; 33 per cent, *Lucas v. 44th Gen'l Assembly of Colorado*, 377 U.S. 713, 727-730 and 41 per cent, *Davis v. Mann*, 377 U.S. 678, 688-689. Other federal courts have followed this principle. See Annot., *Apportionment-Constitutionality*. 12 L.Ed.2d 1282, 1289 (1964).

This method of analysis, often referred to as a test of "the minimum population electing a majority," requires a selection of the most over-represented districts so as to yield a worst-case sample. Stipulated exhibits in the record show that the Wyoming District Court has previously approved Wyoming plans allowing election of a majority (53 per cent) of the Senate by 47 per cent of the population, *Schaefer v. Thomson, supra*, and 49.7 per cent electing 56 per cent of the Senate, *Thompson v. Thomson*, 344 F.Supp. 1378 (D. Wyo. 1972). Similarly the court approved election of 51 per cent of the House by 46.5 per cent of the population, *Schaefer v. Thomson, supra*, and election of 52 per cent by 47 per cent, *Thompson v. Thomson, supra*.

The current House apportionment scheme could allow, in theory, 46.65 per cent of the population to elect 51.56 per cent of the representatives. See Exhibits A-501 through 510. Of course this worst-case sampling method presents a deliberately jaundiced perspective, but its usefulness lies in its measure of the maximum possible erosion of majority process for comparative purposes. The 1982 apportionment is not different from Wyoming apportionments approved by the courts in *Schaefer v. Thomson, Harrison v. Schaefer* and *Thompson v. Thomson, supra*. It is readily apparent that the apportion-

ment of a representative to Niobrara County does not cause or contribute to an unfair distribution of political influence.

4. The Relief Sought is Trivial.

The clearest indicia of the de minimis impact of the challenged apportionment are reflected in the nature of the relief sought by appellants. It has been proposed that Niobrara County be joined with Goshen County to form a representative district. If this were to occur, the number of members of the House would be reduced by one, to a total of 63. New statistical analyses of population and voter numbers using these assumptions were submitted to the district court. These results emerged:

	64 members with one from Niobrara County	63 members with none from Niobrara County
Minimum population which could elect a majority of the House	46.65% (majority of 64 seats)	46.65% (majority of 63 seats)
Per cent of members elected from appellants' respective districts	43.75% (28 of 64)	44.40% (28 of 63)

The district court found these changes to be trivial. The court observed that ". . . such minor improvement hardly reaches the level of significance." *Brown v. Thomson, supra,* at 783.

It is worthwhile to compare appellants' complaints about the treatment given Niobrara County with the scope of most reapportionment challenges. Usually, apportionment suits are brought to redistribute political influence throughout a whole jurisdiction (state, city or district). Plaintiffs generally complain of some significant loss of voting power, or discrimination against economic, racial, geographic or political entities. Such is not the case here. No statewide reallocation of political

influence is prayed for. No discrimination against a group of voters, or a voting district, is shown in the record. The facet of Wyoming's 1981 reapportionment that is challenged by appellants involves a minor adjustment in the plan to accommodate an isolated rural county. The district court's approval of this adjustment is unlikely to be construed by anyone to be a reversal in current apportionment law as contended by appellants.

In support of his conclusion that the appellants showed no significant injury, Circuit Judge Doyle quoted *White v. Regester*, 412 U.S. 735 at 764:

> We do not consider relatively minor population deviations among state legislative districts to substantially dilute the weight of individual votes in the larger districts so as to deprive individuals in these districts of fair and effective representation.

In summary, appellants did not prove that their votes have been diluted, that their rights of full and fair political representation have been compromised or that they have suffered unfair or invidious discrimination. Appellants offered no evidence of intent to discriminate, nor of a discriminatory pattern, impact or effect. There is no discrimination against a discrete and insular minority. Appellants simply did not and could not prove a prima facie case.

B. THE APPORTIONMENT WILL MAINTAIN AN EFFICIENT RELATIONSHIP BETWEEN LOCAL AND STATE GOVERNMENT.

The district court found that appellants did not show invidious discrimination. However, the court heard evidence regarding state policies underlying the legislature's decisions prior to taking the case under advisement. The court noted that even if a prima facie case of discrimination were found in the record, the state's

reasons for providing a representative to Niobrara County's residents were valid and sufficient to overcome such a finding. *Brown v. Thomson, supra.*

The facts are unique. Niobrara County, although far from being large by Wyoming standards, encompasses 2,614 square miles, larger than the states of Delaware (1,982 square miles) and Rhode Island (1,049 square miles). Wyoming contains a population of about 470,000 people in an area of 97,914 square miles, with a density of 4.8 persons per square mile. Distances between communities are great. Communication is expensive and travel is time-consuming. The district court observed that "Wyoming as a state is unique among her sister states. A small population is encompassed by a large area." *Brown v. Thomson, supra,* at 784. "[Wyoming's] problems are different from those which are present in almost every other state in the union. Geographically it is large, but population-wise, it is relatively small, although it is growing." *Id.* at 788.

As has been shown, the deviation in this case is de minimis. The effect upon appellants is trivial. But the benefit to the residents of Niobrara County cannot be measured in statistics. The district court found that:

> In Wyoming, the counties are the primary administrative agencies of the State government. It has historically been the policy of the State that counties remain in this position.
>
> The people within each county have many interests in common such as public facilities, government administration, and work and personal problems. Under the facts of this action, to deny these people their own representative borders on abridging their right to be represented in the determination of their futures.

Brown v. Thomson, supra at 784.

The district court's decision, upholding a basic legislative judgment, is not inconsistent with this Court's holdings in *Reynolds* and *Mahan v. Howell*, 410 U.S. 315, that historic and functional political subdivision boundaries may be relied upon in legislative apportionment. Appellants contend that this decision constitutes a reversal in the law, which may "spawn a substantial regeneration of apportionment litigation." These contentions greatly exaggerate the significance of this case.

Because of great distance and cost factors Wyoming relies heavily upon local governments to bear the burdens of providing most public services. Counties provide the basic unit of government in Wyoming. The Wyoming Constitution charges county government with many important and expensive public duties. Concomitantly, the Constitution severely limits the taxing powers of counties. Revenue shortfalls for county and school district purposes are made up by a complex array of legislative taxing and revenue distribution programs. Without the direct assistance of the state legislature, local governments would be forced to abandon their constitutional duties. Thus Wyoming has chosen, as a matter of practical necessity, to preserve representation of its population by use of county representative districts. The maintenance of historic state policy in a state with unique geographic problems is permissible in the absence of invidious discrimination. See *Reynolds v. Sims, supra*, at 578, 579.

Although the facts are unique, the law is not. This Court has repeatedly observed that limited deviations from mathematically perfect legislative apportionment may be imposed to preserve the integrity of political subdivisions. *Reynolds v. Sims, supra*, at 578, 580; *Mahan v. Howell, supra*, at 322-326.

CONCLUSION

Appellees submit that the district court's analysis of the complaint is correct. There is no invidious discrimination against appellants and there is no evidence of injury to appellants. There is no discrimination against a discrete and insular minority. Wyoming's House apportionment plan has not changed, excepting minor adjustment, since it was found constitutional in 1965 and again in 1972. The district court's dismissal was proper and appropriate.

Wherefore, appellees respectfully submit that the questions raised by appellants are so insubstantial as not to need further argument, and appellees respectfully move this Court to affirm the order of dismissal entered in this cause by the United States District Court for the District of Wyoming.

Dated this 24th day of August, 1982.

Respectfully submitted,

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No. 82-65

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

MARGARET R. BROWN, JUDY KNIGHT, JANE MAXWELL, MARY SHENEFIELD, MARIAM S. STRAUGHAN, SANDRA H. SHUPTRINE, OLIVE J. WHITE,

Appellants,

v.

THYRA THOMSON, as Secretary of the State of Wyoming, et al.

Appellees,

v.

JAMES L. THOMPSON, et al.,

Appellees-Intervenors.

MOTION TO AFFIRM

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MOTION TO AFFIRM

APPELLEES-INTERVENORS

Appellees-Intervenors, who include several Niobrara County residents and the Board of County Commissioners of Niobrara County, are as follows: James L. Thompson, Gerald D. Bardo, Russell Thompson, Kenneth A. Gropp, Richard G. Pfister, Peter M. Hansen, Gertrude Chamberlain, Betty Percival, Mary L. Burke, Board of County Commissioners of the County of Niobrara, Kenneth R. Freeman, as a County Commissioner of the County of Niobrara and in his individual capacity, F. Everett Brooks, as a County Commissioner of the County of Niobrara and in his individual capacity, and Louis L. Landkamer, as a County Commissioner of the County of Niobrara and in his individual capacity.

OPINION BELOW

This case, Brown v. Thomson, is reported at 536 F.Supp. 780 (D. Wyo. 1982).

ADDITIONAL STATUTORY PROVISIONS

Appellants set forth the provisions of Wyoming Statutes §28-2-109 (1981), the 1981 Apportionment Act, in their Jurisdictional Statement. However, they omitted the enabling clause in Chapter 76, Section 3 of the Session Laws of Wyoming, which Appellees-Intervenors hereby set forth:

> It is hereby declared the policy of this state is to preserve the integrity of county boundaries as election districts for the House of Representatives. The Legislature has considered the present population, needs, and other characteristics of each county. The Legislature finds that the needs of each county are unique and the interests of each county must be guaranteed a voice in the Legislature. The Legislature, therefore, will utilize the provisions of Article 3, Section 3 of the Wyoming Constitution as the determining standard in the reapportionment of the Wyoming House of Representatives which guarantees each county at least one representative. The Legislature finds that the opportunity for oppression of the people of this state or any of them is greater if any county is deprived a representative in the Legislature than if each is guaranteed at least one representative. The Legislature finds that the dilution of the power of counties which join together in making these declarations

is trivial when weighed against the need to maintain the integrity of county boundaries. The Legislature also finds that it is not practical or necessary to increase the size of the Legislature beyond the provisions of this act in order to meet its obligations to apportion in accordance with constitutional requirements consistent with this declaration.

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INTRODUCTION

Appellants' Jurisdictional Statement is overreaching. They attempt to prop up a jurisdictional case by playing with such catch phrases as "dangerous trend," "violative of . . . constitutional rights if unchecked," "reversal in current apportionment law," and "spawning substantial regeneration of apportionment litigation."

Appellants are grasping at straws. Rather than a flaunting of this Court's apportionment decisions, the Memorandum Opinion of Judges William E. Doyle, Ewing T. Kerr and Clarence A. Brimmer and the Special Concurrence of Judge Doyle are straight-forward, well-reasoned and grounded solidly within the framework of this Court's apportionment decisions.

In view of the trial court's care in anchoring its decision to the apportionment guide-posts laid down by this Court, the questions raised by Appellants are so lacking in substance as not to need further argument.

FACTUAL STATEMENT AND LEGAL ARGUMENT

Factual and legal issues markedly similar to those presented in this case were before this Court in 1966 in Harrison v. Schaefer, 383 U.S. 269, 86 S.Ct. 929, 15 L.Ed.2d 750 (1966) and were disposed of by a summary affirmance of Schaefer v. Thomson, 251 F.Supp. 450 (D. Wyo. 1965).

There is no more substance to the questions involved in this case than those raised and summarily disposed of sixteen years ago in Schaefer.

In Schaefer, a three-judge panel, which included Judge Kerr, held that the 1963 reapportionment of the Wyoming House of Representatives was not invidiously discriminatory.

Under the 1963 Reapportionment Act, the House of Representatives had 61 representatives. The State of Wyoming had a total population of 329,646. Niobrara County had one representative with a population of 3,750. The "official divisor" was 5,400 people. Four counties fell below the "official divisor" but each retained its own representative.

In Thompson v. Thomson, 344 F.Supp. 1378 (D. Wyo. 1972), the Court upheld the constitutionality of the 1971 reapportionment of the Wyoming House of Representatives. The Court found that the 1963 House reapportionment was not substantially altered by the 1971 Act.

The population of the State of Wyoming in 1971 was 332,416. The number of representatives was increased to 62. Niobrara County, with a population of 2,924, had one representative. The official divisor was 5,300. Five counties were below the official divisor and yet each retained its own representative.

Under the 1981 Reapportionment Act, the population of the State was 469,557. The number of representatives was increased to 64. Five counties, including Niobrara County, fell below the official divisor of 7,300 and each was given a representative.

The overall relative range of the 1963 House apportionment which was upheld in Schaefer v. Thomson, supra, and summarily affirmed by this Court in Harrison v. Schaefer, supra, was 90%. The overall

relative range of the 1971 House apportionment was 86%. The overall relative range of the 1981 House apportionment is 89%, a lower percentage than that summarily affirmed by this Court in 1966. However, Appellants attempt to circumvent the authority of this Court's summary affirmance in Schaefer by arguing that later cases have nullified the 1966 decision. Appellants rely on Gaffney v. Cummings, 412 U.S. 735, 37 L.Ed.2d 298, 93 S.Ct. 2321 (1973); White v. Regester, 412 U.S. 755, 37 L.Ed. 314, 93 S.Ct. 2332 (1973); Mahan v. Howell, 410 U.S. 315, 35 L.Ed.2d 320, 93 S.Ct. 979 (1973); and Connor v. Finch, 431 U.S. 407, 52 L.Ed.2d 465, 97 S.Ct. 1828 (1976).

Appellants' conclusory statements to the contrary, the later decisions cited by Appellants actually reinforce the summary affirmance in Harrison v. Schaefer, supra, and further render the issues involved here devoid of substance. Judges Doyle, Kerr and Brimmer appropriately noted that reapportionment plans are not stricken automatically because of a large deviation in overall relative range. The panel also acknowledged that

this Court has held that a deviation of more than 10 per cent requires that a rational state policy be established to justify a reapportionment. White v. Regester, supra; Mahan v. Howell, supra; Gaffney v. Cummings, supra. The trial court further noted that the rational justification standard is less stringent in state as opposed to Congressional reapportionment cases. Mahan v. Howell, supra.

In applying this Court's more recent apportionment decisions to the 1981 Wyoming House apportionment, the trial court appropriately relied on the language and rulings in Mahan and Gaffney.

The trial court emphasized Gaffney's acknowledgment that "representation does not depend solely on mathematical equality among district populations" and that "unrealistic overemphasis on raw population figures, a mere nose count in the districts, may. . . itself furnish a ready tool for ignoring factors that in day-to-day operation are important to an acceptable representation and apportionment arrangement." Brown v. Thomson at 784.

The trial court noted this Court's specific ruling in Mahan that the policy of maintaining the integrity of political subdivision lines is a rational one. Id. at 783-784.

Cognizant of this Court's apportionment guidelines, the trial court reviewed extensive evidence, most of which was uncontroverted, and concluded that the 1981 Reapportionment plan (1) does take population figures into account, (2) has only a de minimis effect on the "dilution" of the Appellants' votes, and (3) has a rational policy basis which justifies the statistical deviations.

Without rehashing the trial court's analysis of the total statistical picture, as opposed to the isolated "overall relative range" figure which Appellants cite, Appellees simply note the finding that the .65 percent change in voting strength which Appellants would receive if Niobrara County were stripped of its sole representation in the state legislature is "trivial" and "insufficient to constitute invidious discrimination." Id. at 783.

The trial court further held that the statistical deviation in this case was justified by a showing that there is a rational state policy in maintaining the integrity of counties as political subdivisions in Wyoming and in the "unique" features of both Wyoming as a state and Niobrara County as an agency of the state government:

> Wyoming as a state is unique among her sister states. A small population is encompassed by a large area. Counties have always been a major form of government in the State. Each county has its own special economic and social needs. The needs of the people are different and distinctive. Given the fact that the representatives from the combined counties of Niobrara and Goshen would probably come from the larger county, i.e. Goshen, the interests of the people of Niobrara County would be virtually unprotected.
>
> The people within each county have many interests in common such as public facilities, government administration, and work and personal problems. Under the facts of this action, to deny these people their own representative borders on abridging their right to be represented in the determination of their futures.
>
> In Wyoming, the counties are the primary administrative agencies of

> the State government. It has historically been the policy of the State that counties remain in this position.
>
> The taxing powers of counties are limited by the Constitution and some State statutes. Supplemental monies are distributed to the counties in accordance with appropriations designated by the State Legislature. It comes as no surprise that the financial requirements of each county are different. Without representation of their own in the State House of Representatives, the people of Niobrara County could well be forgotten.

Brown v. Thomson at 784.

The trial court indicates at the beginning of its Memorandum Opinion, authored by Judge Kerr, that the issue in this case is a narrow one. It pertains to a single county and what the court characterized as "the relatively simple question" of whether or not the allocation of a representative to that county constitutes invidious discrimination. In deciding that question, the trial court was careful to follow the apportionment guidelines laid down by this court.

The trial court did not deviate in any way, shape or form from the constitutional voting requirements of the 14th Amendment.

Accordingly, the question on which this case depends is insubstantial. It does not involve the usurptious birth of a new trend in apportionment law or the threat of increased apportionment challenges.

Judge William E. Doyle filed a special concurring opinion which is helpful in its analysis of this court's apportionment decisions and the logical route by which it reaches the conclusion that the preservation of Niobrara County's sole representation in the State Legislature is not injurious to the remainder of the population of Wyoming and does not show even the "slightest sign" of discriminating against Appellants or any other group of people.

Judge Doyle finds the unique features of Wyoming as a state and Niobrara County as an element of the political structure within the state to be important factors in this case. He also appropriately notes that the apportionment plans which this court has condemned in the past were characterized by across the board substantial population differences, as opposed to the "single unit" over-representation in this case.

Judge Doyle, like Judges Kerr and Brimmer, finds that there is little to distinguish this case from this Courts' 1966 summary affirmance of the 1963 Wyoming House apportionment plan in Harrison v. Schaefer, supra: "and, therefore, one would be hard put to reach a different conclusion in this case without, in effect, overruling the Supreme Court's affirmance in the Schaefer case, a course we do not choose to follow." Brown v. Thomson at 788.

CONCLUSION

In view of the fact that Judges Doyle, Kerr and Brimmer decided this case squarely within the cacoon of this Court's apportionment decisions, there is no substance to the questions raised by Appellants. The trial court's decision does not raise a red flag in the area of apportionment law and does not depart in any way, shape or form from constitutional protections or guarantees. Accordingly, this case, like Harrison v. Schaefer, supra, before it, is ripe for summary affirmance.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

MARGARET R. BROWN, JUDY KNIGHT, JANE MAXWELL, MARY SHENEFIELD, MIRIAM S. STRAUGHNAN, SANDRA H. SHUPTRINE, OLIVE J. WHITE,	)	
Plaintiffs,	)	
vs	)	No. C81-292
THYRA THOMSON, as Secretary of State of the State of Wyoming, ED HERSCHLER, THYRA THOMSON, SHIRLEY WITTLER and JAMES B. GRIFFITH, as members of the State Canvassing Board, and ED HERSCHLER, as Governor of the State of Wyoming,	)	
Defendants,	)	
JAMES L. THOMPSON, GERALD D. BARDO, RUSSELL THOMPSON, KENNETH A GROPP, RICHARD G. PFISTER, PETER M. HANSEN, GERTRUDE CHAMBERLAIN, BETTY PERCIVAL, MARY L. BURKE, BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF NIOBRARA, KENNETH R. FREEMAN, as a County Commissioner of the County of Niobrara and in his individual capacity, and LOUIS L. LANDKAMER, as a County Commissioner of the County of Niobrara and in his individual capacity,	)	
Intervening Defendants.	)	

Sue Davidson and Edwin H. Whitehead of the firm Urbigkit & Whitehead, Cheyenne, Wyoming, appearing as counsel for plaintiffs.

Steven F. Freudenthal, Attorney General for the State of Wyoming, Peter J. Mulvaney, Deputy Attorney General for the State of Wyoming, and Randall T. Cox, Assistant Attorney General for the State of Wyoming, appearing as counsel for defendants.

Richard J. Barrett of the firm Hathaway, Speight and Kunz, Cheyenne, Wyoming, appearing as counsel for intervening defendants.

MEMORANDUM OPINION

Before DOYLE, Circuit Judge, KERR and BRIMMER, District Judges.

KERR, District Judge

Plaintiffs have filed this action challenging the constitutionality of the 1981 Reapportionment Law allocating a representative to Niobrara County and Section 3 of Article 3 of the Wyoming State Constitution. Section 3 provides that "each county shall constitute a. . .representative district. . .each county shall have at least. . .one representative." Jurisdiction is based upon 28 U.S.C. §1343 (3) and (4). A three-judge court was convened pursuant to 28 U.S.C. §2281 to hear this action.

The issue here involved a narrow one and the action can hardly be described as one of first impression for this Court. For the fourth time, this Court is considering the question of the constitutionality of a reapportionment law enacted by the State legislature. Schaefer v. Thomson, 240 F.Supp. 247 (D. Wyo. 1964); Schaefer v. Thomson, 251 F.Supp. 450 (D.Wyo. 1965); Thompson v. Thomson, 344 F.Supp. 1378 (D. Wyo. 1972).

At issue before the Court is the relatively simple question of whether or not the allocation of a representative to Niobrara County constitutes invidious discrimination and, as such, is unconstitutional.

The relevant facts are simple and not in dispute. The parties have agreed to some of the facts in the form of a stipulation and the evidence presented by both parties to the Court was, for the most part, uncontroverted.

Niobrara County is the least populous of Wyoming's 23 counties with a population of 2,924 people in a state containing 469,557 people. Under the 1981 Reapportionment Act, Niobrara County was allocated its own representative in the State House of Representa-

tives. Niobrara County has had its own representative since its creation in 1913, some 69 years.

Plaintiffs urge that this Court should find that such an allocation is unconstitutional and that Niobrara and neighboring Goshen County should be combined to form one representative district. Defendants and Intervenors take the opposite position and claim that the statistical difference in allocating a representative to Niobrara County is insignificant and that any statistical discrepancies are more than outweighed by a rational State interest in the current reapportionment.

In Schaefer v. Thomson, 521 F.Supp. 450 (D.Wyo. 1965), this Court was called upon to analyze the reapportionment, or lack thereof, of the State legislature. We found it necessary to reapportion the State Senate, but held that the reapportionment of the State House of Representatives was not invidiously discriminatory:

> We reiterate our previous opinion that the Wyoming Reapportionment Act of 1963 (Chpater 22, Session Laws of Wyoming, 1963) is not an

> invidious discrimination insofar as it provides for representation in the State House of Representatives and in that respect it does not violate the Fourteenth Amendment to the United States Constitution.

The Schaefer case was affirmed by the Supreme Court in 1966. Harrison,et al. v. Schaefer, et al., 383 U.S. 269 (1966). Under the 1963 Reapportionment Act, the House of Representatives had 61 representatives. The State of Wyoming had a total population of 329,646. Niobrara County had one representative with a population of 3,750. The "official divisor" was 5400 people. Four counties fell below the 5400 level, Crook, Niobrara, Sublette and Teton, but each still had its own representative.

In 1972, this Court was again called upon to evaluate another legislative reapportionment scheme. In upholding the constitutionality of the 1971 Reapportionment Law, this Court stated:

> It seems best at this point to dispose of the issue concerning the alleged unconstitutionality of the reapportionment of the House of Representatives. The Act made only five minimal adjustments to the 1963 Reapportionment of the House, which had previously been found

> constitutional by this Court and affirmed by the United States Supreme Court. The changes increased by one the number of representatives in two districts. These changes all reflected population variations.
>
> We are of the opinion that the reapportionment of the House by the 1971 Act does not constitute invidious disrimination for the reason that the 1963 reapportionment of the House was not substantially altered and, therefore, the 1971 Act does not abridge the Equal Protection clause of the Fourteenth Amendment to the United States Constitution.

At the time of the 1971 Act, the population of the State was 332,416. The number of representatives was increased to 62 and the official divisor was 5300. There were some shifts in population and representatives were changed to reflect said shifts. Five counties, Crook, Hot Springs, Niobrara, Sublette and Teton, were all below the official divisor in population and yet each received a representative in the House under the 1971 Act. Niobrara County had a population of 2,924 at that time.

Under the 1981 Reapportionment Act now before the Court, the population of the State

is 469,557 and the official divisor is 7300. Once again, five counties, Crook, Hot Springs, Niobrara, Sublette and Teton, fall below the population level of the official divisor. Each was given a representative under the 1981 Law. Changes were made to reflect shifting population figures in some of the impacted counties. The number of representatives was increased to 64. None of the changes in the 1981 Law were challenged herein with the exception of the allocation by the legislature of a representative to Niobrara County.

One of the factors to be considered in reapportionment cases involved statistical analysis of the relevant figures. In White v. Regester, 412 U.S. 755 (1973), the Supreme Court held that a deviation of more than 10 percent requires that a rational state policy be established to justify the reapportionment. See also, Mahan v. Howell, 410 U.S. 315 (1973); Gaffney v. Cummings 412 U.S. 735 (1973).

Initially, the 89 percent relative range figure would appear to conclusively establish a prima facie case and possibly invidious

discrimination in the 1981 Reapportionment Law. A close examination of the other relevant statistics, however, soon reveals the fallacy of relying upon only one statistic. Utilizing only the overall relative range figure distorts the picture.

The population differential in Niobrara County between the 1965 court-ordered reapportionment, as affirmed by the Supreme Court, and the 1981 Reapportionment Law is the difference between 3,750 and 2,924, or 826 people.

Statistically, the "dilution" of the plaintiffs' votes is de minimis when Niobrara County has its own representative. The improvement overall with the representative deleted ranges from 0.0003 in Teton County to 0.0023 in Laramie County. Such minor improvement hardly reaches the level of significance.

In this action, we do not have a small percentage of the population electing a large number of representatives as was the case in the Senate in Schaefer v. Thomson, 521 F. Supp. 450 (D.Wyo. 1965). If Niobrara County continues to have its own representative,

46.65 percent of the population would elect 33 of 64 representatives. Thus, 46.65 percent is the minimum population which could elect a majority of House members. This figure is comparable to the minimum population percentage of 47.52 percent electing 53.33 percent of the Senate seats in the 1965 Schaefer v. Thomson decision.

Alternatively, when considering the counties in which the plaintiffs reside, the Court finds that these seven counties elect 28 out of 64 representatives or 43.75 percent. The seven counties contain 46.3 percent of the total state population utilizing the 1980 censue figures. Comparatively, if plaintiffs' plan is adopted and Niobrara County does not have its own representative, the seven counties in which plaintiffs reside would elect 28 representatives out of 63 or 44.4 percent of the House of Representatives. Statistically, a .65 percent change is trivial but, more importantly, such a percentage is insufficient to constitute invidious discrimination. Rather, the effect on plaintiffs is best described as de minimis.

The overall changes that have been made since this Court last considered this issue have not been of sufficient magnitude to constitute invidious discrimination.

The statistician who appeared before the Court was clear and emphatic when he stated that there was no statistically significant change in the relevant figures when the plan allocating a representative to Niobrara County was compared with a plan which combined Niobrara County with Goshen County, thus eliminating Niobrara County's representative.

Reapportionment plans are not stricken automatically because of a large deviation. Rather, upon such a showing, the burden of proof shifts to the state to establish a rational justification and state policy for the deviation. The standard to be applied is less stringent than in Congressional reapportionment cases. Mahan v. Howell, supra.

In Mahan, the Supreme Court clearly stated that a state reapportionment plan must consider population figures but that deviations could be justified by legitimate state

interests provided that invidious discrimination is not the end result:

> We conclude, therefore, that the constitutionality of Virginia's legislative redistricting plan was not to be judged by the more stringent standards that Kirkpatrick and Wells make applicable to congressional reapportionment, but instead by the equal protection test enunciated in Reynolds v. Sims, supra. We reaffirm its holding that "the Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable." 377 U.S. at 577. We likewise reaffirm its conclusion that "[s]o long as the divergences from a strict population standard are based on legitimate considerations incident to the effectuation of a rational state policy, some deviations from the equal-population principle are constitutionally permissible with respect to the apportionment of seats in either or both of the two houses of a bicameral state legislature." Id. at 579.
>
> The policy of maintaining the integrity of political subdivision lines in the process of reapportioning a state legislature, the policy consistently advanced by Virginia as a justification for disparities in population among districts that elect members to the House of Delegates, is a rational one. It can reasonably be said, upon examination of the legislative

plan, that it does in fact advance that policy.

In Gaffney v. Cummings, supra, the Supreme Court expanded its discussion on role of population figures in determining the reapportionment:

> More fundamentally, Reynolds recognized that "the achieving of fair and effective representation for all citizens is. . .the basic aim of legislative apportionment," Id. at 565-566, and it was for that reason that the decision insisted on substantial equality of populations among districts.
>
> This is a vital and worthy goal, but surely its attainment does not in any common sense way depend upon eliminating the insignificant population variations involved in this case. Fair and effective representation may be destroyed by gross population variations among districts, but it is apparent that such representation does not depend solely on mathematical equality among district populations. There are other relevant factors to be taken into account and other important interests that States may legitimately be mindful of. See Mahan v. Howell, supra; Abate v. Mundt, 403 U.S. 182 (1971); Dusch v. Davis, 387 U.S. 112 (1967); Sailors v. Board of Education, 387 U.S. 105 (1967); Burns v. Richardson, supra. An unrealistic overemphasis on raw population figures, a mere nose count in the

districts, may submerge these other considerations and itself furnish a ready tool for ignoring factors that in day-to-day operation are important to an acceptable representation and apportionment arrangement. [Emphasis added].

Both the State defendants and the intervening defendants have established a rational policy basis which justified the statistical deviations which exist under the 1981 Reapportionment Law.

Wyoming as a state is unique among her sister states. A small population is encompassed by a large area. Counties have always been a major form of government in the State. Each county has its own special economic and social needs. The needs of the people are different and distinctive. Given the fact that the representatives from the combined counties of Niobrara and Goshen would probably come from the larger county, i.e. Goshen, the interests of the people of Niobrara County would be virtually unprotected.

The people within each county have many interests in common such as public facilities, government administration, and work

and personal problems. Under the facts of this action, to deny these people their own representative borders on abridging their right to be represented in the determination of their futures.

In Wyoming, the counties are the primary administrative agencies of the State government. It has historically been the policy of the State that counties remain in this position.

The taxing powers of counties are limited by the Constitution and some State statutes. Supplemental monies are distributed to the counties in accordance with appropriations designated by the State Legislature. It comes as no surprise that the financial requirements of each county are different. Without representation of their own in the State House of Representatives, the people of Niobrara County could well be forgotten.

It is the opinion of this Court that the allocation by the State Legislature of a representative to Niobrara County in the 1981 Reapportionment law is not unconstitutional.

The allocation is not statistically significant and does not constitute invidious discrimination. Under the 1981 Reapportionment Law, the integrity of political boundaries remains intact while a rational State policy continues to be maintained as it has been since 1913 in Niobrara County.

This Memorandum Opinion constitutes the Findings of Fact and Conclusions of Law and additional findings and conclusions are unnecessary.

An Order will be entered dismissing the Complaint with prejudice. Each party is to pay their own costs.

Dated this 21st day of April, 1982.

/s/William E. Doyle
United States Circuit Judge

/s/Ewing T. Kerr
United States District Judge

/s/Clarence A. Brimmer
United States District Judge

DOYLE, Circuit Judge - SPECIAL CONCURRENCE

I concur in both the result and the reasoning given by Judge Kerr in his opinion. I have prepared a supplemental opinion not because of any difference that I have, but rather to express my own conclusions based upon the study of the record and of the cases.

As Judge Kerr said, the issue here is whether the action of the legislature in enacting the reapportionment statute was in error because it gave to Niobrara County a representative, even though its population did not justify it. Wyoming has a Constitutional provision, §3 of Article III, of the Wyoming State Constitution, which provides that "each county shall constitute a representative district* * *each county shall have at least* * *one representative."

Jurisdiction herein arises under 28 U.S.C. §1232(3) and (4). A three-judge court was convened pursuant to 28 U.S.C. §2284 to hear this action.

The issue involved is, as indicated above, a somewhat narrow one. It pertains to

a single county. The Legislature sought to follow a formula provided by Wyoming Statute §28-2-109(9)(ii). It reads as follows:

> The rates for the apportionment of the representatives is the smallest number of people per representative which when divided into the population in each representative district as shown by the official results of the 1980 federal decennial census with fractions rounded to the nearest whole number results in a house with sixty-three (63) representatives.

Section 3 of Article III really requires that the reapportionment be carried out county by county. The average population for a representative was determined to be 7,377. As to every county in Wyoming except Niobrara it was possible to come very close to carrying out the ideal in accordance with the representative number. A bona fide effort was made to farily arrive at each solution in accordance with the formula. The result was about as fair and equal as was possible. To be sure, there were some counties which were slightly over-represented and some which were to a slight degree under-represented, and Niobrara is the only county which could be

regarded as being substantially over-represented, because its population was shown to be 2,924. An effort was made to follow out the preceding history by awarding a representative to Niobrara County. It had held its own from the 1971 census to the present time, the population remaining at 2,924. During previous years it had been a more populous county, and also one ripe in minerals, and productive in farming and ranching. However, since the sixties there have been some population changes, and these changes have left Niobrara with a relatively small population considering its size and importance, in relationship to the representation number of 7,337.

As we have noted above, each county has traditionally been a representative unit, and, indeed, this approach has been approved by the Supreme Court. Harrison v. Schaefer, 383 U.S. 269 (1966). Five counties, Crook, Hot Springs, Niobrara, Sublette and Teton, were all over-represented, but Niobrara had a lower population for the official divisor than the others. The Wyoming Legislature recognized this, and it raised the number of representatives from 63 to 64 in order to

give Niobrara the representation that it had previously had. In the other counties where the population was below the divisor each received one representative, notwithstanding that it resulted in their being slightly over-represented.

The only result which is attacked by the plaintiffs is Niobrara, because, I suppose, the numerical difference is great. The over-representation is noteworthy.

But it strikes me that no one has suffered discrimination as a result of this. If a representative had been taken away from one of the other counties in order to give Niobrara one, it would be a different matter. Someone would have suffered. On the other hand, inasmuch as the Legislature created a new additional representative, rather than taking away one or more, the result was a total of 64 rather than 63. As a result of this, no county suffered, and no one can claim that he or she was injured. Niobrara was benefited, but no corresponding injury flowed from the action. Every other county comes very close to fair and equitable representation.

If the numbers approach were to be followed religiously it would mean that one single county would have to relinquish representation. Represented districts would have to be merged in order to satisfy the one-man, one-vote formula. As Judge Kerr has indicated in his opinion this would upset the representation by county approach that has been historically followed in Wyoming. It would result in inequity in terms of one county having no representation whatsoever, and all other counties having at least one representative. This would result in others having all the representation. This could result in a populous county being paired nearer this representative district with a small county. The large county would dominate the election.

Wyoming has good reasons for clinging to the county as a representative district because this insures that the pecular needs of each and every county can be represented in the Legislature. Although this might not carry out fully the equality of numbers of voters within the various election districts it comes close enough to be roughly fair.

The Legislature posed an alternative, and that was that if the one representative in Niobrara County plan was held to be invalid, that Niobrara would be placed in an election district with neighboring Goshen County, which has a population of 12,040, and has two representatives. Thus, the result of this would be that Goshen's representatives would be assigned the task of representing Niobrara County, also. The consequence would be that Niobrara would not have its own representative.

In the case of Reynolds v. Sims, 377 U.S. 533 (1964), the Supreme court found the reapportionment of the Alabama Legislature to be unconstitutional where the ratio between population in the largest Senate district to the smallest was 41 to 1, and the ratio between the largest and the smallest House district was 15 to 1. As a result of the reapportionment, a small minority of the population, 25.7% was allowed to elect a majority of the representatives, and 25.1% to elect a majority of the members of the Senate. Reynolds established that both houses of the state legislature have to be apportioned so

that the districts are as near to equal population as is practical. The Court stressed, however, that "mathematical exactness or precision" is not required. Id. at 577. There must be substantial compliance with the goal of population equality. The Reynolds Court also held that a state may rationally consider according to political subdivisions some independent representation in at least one body of the state legislature, as long as the basic standard of equality of population among districts is maintained. Id. at 580. The Court there pointed out that "carried too far, a scheme giving at least one seat in one house to each political subdivision (for example, to each county), could easily result, in many states, in a total subversion of the equal population principle." Id. at 581. That latter possibility is not present, of course, in the case at bar.

One of the recent cases in which the Supreme Court has determined the presence of invidious discrimination is Swann v. Adams, 385 U.S. 440 (1967), wherein the Court held that a variance of 25.65% in one house of the Florida legislature, and 33.55 % in the other

was impermissible, "absent a satisfactory explanation grounded on acceptable state policy." Id. at 444.

Kilgarlin v. Hill, 386 U.W. 120 (1967), invalidated a state plan, too. There the Court held that the 1965 Texas reapportionment statute was invalid. The plan provided that districts varied from 14.84% over-represented to 11.64% under-represented, for a total deviation of 26.48%, with the ratio between the largest and the smallest districts being 1.31 to 1. There again it was said this was presumptively invalid.

Whitcomb v. Chavis, 403 U.S. 124 (1971), held that where there was a maximum variance in population of Indiana Senate seats of 28.20%, with the ratio between the largest and the smallest districts of 1.372 to 1., and the maximum variance in house districts of 24.78% with a ratio of 1.279 to 1, the apportionment plan did not comply with the requirements of the equal protection clause. None of the above cited cases govern the present situation involving as it does a single county which has received a benefit, namely representation.

The more recent case of Mahan v. Howell, 410 U.S. 315 (1973), is relied on by both sides. The reapportionment of the Virginia House of Delegates was challenged as being in violation of the Equal Protection Clause of the Fourteenth Amendment because there were impermissible population deviations of 16.4%. It was held in Mahan that this variation was not excessive. It resulted from Virginia's rational objective of preserving the integrity of political subdivision lines. The Mahan Court relied on Reynolds for the point that more flexibility is afforded to states in legislative reapportionment than is allowed in congressional redistricting. Such flexibility was ruled in Mahan to be constitutionally permissible for the reason that there are a larger number of seats in the state legislative body to be distributed than in congress, and as a result it may be possible for a state to use political subdivision lines to a greater extent in establishing state legislative districts.

The more stringent standards of Kirkpatrick v. Preisler, 394 U.S. 526 (1969), and Wells v. Rockefeller, 394 U.S. 542

(1969), were rejected. Instead, the Court reaffirmed the Reynolds doctine, "that as long as the divergences are based on legitimate considerations incident to the effectuation of a rational state policy, some deviation from the equal population principle are permissible* * *." Mahan, supra at 325. The 16% deviation which was approved in Mahan is a good deal less than the percentage deviations that were found to be invalid in the previous decisions of the Supreme Court. It was acknowledged that the percentage deviation approved in Mahan "may well approach the tolerable limits; we do not find it exceeds them." Id. at 329.

Gaffney v. Cummings, 412 U.S. 735 (1973), and its companion, White v. Regester, 412 U.S. 755 (1973), also define standards for reapportionment. In Gaffney, the maximum deviation is 7.83% and in White, 9.9%. In both cases, the Court concluded that there was no violation of equal protection, and that such minor deviations did not make out a prima facie case of invidious discrimination.

Gaffney stands for the proposition that the aim of legislative apportionment is fair and effective representation for all citizens. Id. at 748. It was acknowledged that this could be destroyed by gross population variations among districts, but it is apparent that such representation does not depend solely upon mathematical equality among district populations; other relevant factors are to be considered, as well as important state interests. The question that is to be asked in order to comply with the decision in Gaffney is will this plan deprive any person of fair and effective representation in the state legislature.

In White the Court said "[W]e do not consider relatively minor population deviations among state legislative districts to substantially dilute the weight of individual votes in the larger districts so as to deprive individuals in these districts of fair and effective representation." Id. at 764.

This brings us back to the present case and the disproportion in a single district. Is it injurious to the remainder of the population of Wyoming? No discomfort is apparent

as a result of giving the people of Niobrara County the sorely needed representation. It finally is to be noted and concluded that there is not the slightest sign of any group of people being discriminated against here. There is no indication that the larger cities or towns are being discriminated against; on the contrary, Cheyenne, Laramie, Casper, Sheridan, are not shown to have been suffered in the slightest degree. There has been no preference for the cattle-raising or agricultural areas as such.

In reading the decisions of the Supreme Court, one tends to conclude that the apportionment cases differ on their facts, and Wyoming is certainly no exception. Its problems are different from those which are present in most every other state in the union. Geographically it is large, but population-wise, it is relatively small, although it is growing. There were substantial differences in many of the plans that were condemned, but these were across the board and were not present in a single unit, as here. Cf. Connor v. Finch, 431 U.S. 407 (1977); Roman v.

Sincock, 377 U.S. 695 (1964), 710; Reynolds v. Sims, supra, 337 U.S. 533 (1964).

In Connor, supra, the result might very well have been different had Mississippi taken pains to call attention to the unique features in the political structure sufficient to justify more than de minimus variations.

The defendants in the case at bar rely heavily on the fact that prior Wyoming reapportionment plans have been upheld, and it is true that the 1963 plan, outlined in 251 F.Supp. 450 (D.C. Wyo. 1965), was affirmed by the Supreme Court, sub nom. in Harrison v. Schaefer, 383 U.S. 269 (1966). There is little to distinguish the 1966 case from the present case, and therefore, one would be hard put to reach a different conclusion in this case without, in effect, overruling the Supreme Court's affirmance in the Schaefer case, a course which we do not choose to follow.

In conclusion, after having heard the evidence and after having reviewed it, together with the well reasoned opinion of Judge Kerr, I see good reasons for concurring

in the opinion of Judge Kerr, and in denying the relief which has been sought by the plaintiffs, i.e., judicial reapportionment of the several counties in the state. The legislative reapportionment by the Wyoming Legislature was generally fair and equitable. The representation for Niobrara County did not injure the other counties. The representation given to Niobrara was accomplished by adding one more representative than had been planned. The result was not discriminatory nor invidious.

One further thought: The Legislature's alternative reduction of the number of members by one, and the combining of Niobrara County with Goshen County, while it might satisfy the numbers, is not, in any other respect, an attractive option.

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CERTIFICATE OF SERVICE

I, Richard Barrett, the attorney for Niobrara County, Appellees-Intervenors herein, hereby certify that on the 11th day of August, 1982, I served copies of the foregoing Motion to Affirm on the parties hereto as follows:

1. On Appellants, by mailing copies in a duly addressed envelcpe, with postage prepaid, to Sue Davidson, attorney for Appellants, 504 West 17th Street, Suite 300, Cheyenne, Wyoming 82001.

2. On Appellees-State Officials, by mailing copies in a duly addressed envelope, with postage prepaid, to Steve Freudenthal, Attorney General, State of Wyoming, Capitol Building, Cheyenne, Wyoming 82002, attorney for Appellees-State Officials.

Richard Barrett
Attorney for
Appellees-Interventors

STATE OF WYOMING)
) ss.
COUNTY OF LARAMIE)

The foregoing Certificate of Service was acknowledged before me this 11th day of August, 1982, by RICHARD BARRETT.

Sharon L Bailey
Notary Public

My Commission Expires:
April 7, 1985

Office-Supreme Court, U.S.
FILED
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ALEXANDER L. STEVAS, CLERK

No. 82-65

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

MARGARET R. BROWN, JUDY KNIGHT, JANE MAXWELL, MARY SHENEFIELD, MIRIAM S. STRAUGHAN, SANDRA H. SHUPTRINE, OLIVE J. WHITE,

Appellants,

v.

THYRA THOMSON, as Secretary of the State of Wyoming, ED HERSCHLER, THYRA THOMSON, SHIRLEY WITTLER and JAMES B. GRIFFITH, as members of the State Canvassing Board, and ED HERSCHLER, as Governor of the State of Wyoming,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT, FOR THE DISTRICT OF WYOMING

APPELLANTS' BRIEF ON THE MERITS

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QUESTIONS PRESENTED

1. Has there been a prima facie violation of the equal protection clause of the United States Constitution?

A. Are Wyoming Statutes § 28-2-109(iii) and (c)(xiv) and Article 3, Section 3 of the Wyoming State Constitution unconstitutional?

B. Has there been an improper, illegal dilution of the voting privileges of the Appellants and other citizens and electors of Wyoming in violation of the 14th Amendment, Constitution and Statutes of the United States of America?

2. Are there legitimate considerations incident to the effectuation of a rational state policy justifying violation of the Amendments, Constitution and Statutes of the United States of America and the State of Wyoming?

PARTIES TO THE PROCEEDING

The Appellee-Intervenors, all residents of Niobrara County, Wyoming, have not been set forth in the caption of this case and are as follows: James L. Thompson, Gerald D. Bardo, Russell Thompson, Kenneth A. Gropp, Richard G. Pfister, Peter M. Hansen, Gertrude Chamberlain, Betty Percival, Mary L. Burke, Board of County Commissioners of the County of Niobrara, Kenneth R. Freeman, as a County Commissioner of the County of Niobrara and in his individual capacity, and Louis L. Lanckamer as a County Commissioner of the County of Niobrara and in his individual capacity.

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OPINIONS BELOW

The above-entitled case, *Brown v. Thomson,* is reported at 536 F. Supp. 780 (1982).

STATEMENT OF JURISDICTIONAL GROUNDS

This is a challenge to the constitutionality of the 1981 Apportionment Act of the Wyoming State Legislature which granted a representative to the Wyoming House of Representatives from Niobrara County, although that county's population would not otherwise entitle it to a representative.

Federal jurisdiction is based upon U.S.C. § 1343(3) and (4). A three-judge court was convened pursuant to 28 U.S.C. § 2281.

Appellate jurisdiction of this Court is based on 28 U.S.C. § 1253.

Appeal is taken from the Order of Dismissal with Prejudice entered by the United States District Court for the District of Wyoming on April 21, 1982. The Notice of Appeal was filed on May 12, 1982 in the United States District Court for the District of Wyoming.

CONSTITUTIONAL PROVISIONS, AMENDMENTS AND STATUTES

U.S. CONST. amend. XIV, § 1 provides:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

WYO. CONST. art. 3, § 3 provides:

> "Each county shall constitute a senatorial and representative district; the senate and house of representatives shall be composed of members elected by the legal voters of the counties respectively, every two (2) years. They shall be apportioned among the said counties as nearly as may be according to the number of their inhabitants. Each county shall have at least one senator and one representative; but at no time shall the number of members of the house of representatives be less than twice nor greater than three times the number of members of the senate. The senate and house of representatives first elected in pursuance of this constitution shall consist of sixteen and thirty-three members respectively."

WYO. CONST. art. 3, § 27 provides:

> "The legislature shall not pass local or special laws in any of the following enumerated cases, that is to say: For granting divorces; laying out, opening, altering or working roads or highways; vacat-

ing roads, town plats, streets, alleys or public grounds; locating or changing county seats; regulating county or township affairs; incorporation of cities, towns or villages; or changing or amending the charters of any cities, towns or villages; regulating the practice in courts of justice; regulating the jurisdiction and duties of justices of the peace, police magistrates or constables; changing the rules of evidence in any trial or inquiry; providing for changes of venue in civil or criminal cases; declaring any person of age; for limitation of civil actions; giving effect to any informal or invalid deeds; summoning or impaneling grand or petit juries; providing for the management of common schools; regulating the rate of interest on money; the opening or conducting of any election or designating the place of voting; the sale or mortgage of real estate belonging to minors or others under disability; chartering or licensing ferries or bridges or toll roads; chartering banks, insurance companies and loan and trust companies; remitting fines, penalties or forfeitures; creating [,] increasing, or decreasing fees, percentages or allowances of public officers; changing the law of descent; granting to any corporation, association or individual, the right to lay down railroad tracks, or any special or exclusive privilege, immunity or franchise whatever, or amending existing charter for such purpose; for punishment of crimes, changing the names of persons or places; for the assessment or collection of taxes; affecting estates of decreased persons, minors or others under legal disabilities; extending the time for the collection of taxes; refunding money paid into the state treasury, relinquishing or extinguishing, in whole or part, the indebtedness, liabilities or obligation of any corporation or person to this state or to any municipal corporation therein; exempting property from taxation; restoring to citi-

zenship persons convicted of infamous crimes; authorizing the creation, extension or impairing of liens; creating offices or prescribing the powers or duties of officers in counties, cities, townships or school districts; or authorizing the adoption or legitimation of children. In all other cases where a general law can be made applicable no special law shall be enacted."

WYO. CONST., art. 3, § 48 provides:

"The legislature at the session next following the decennial enumeration of the inhabitants of the state made by the auhority of the United States, shall revise and adjust the apportionment for senators and representatives, on the basis of such enumeration according to ratios to be fixed by laws. (As amended by Laws 1965, House Joint Resolution No. 2, p. 520)."

WYO. STATUTES § 28-2-109 provides:

(a) The ratios for the apportionment of senators and representatives are fixed as follows:

(i) The ratio for the apportionment of senators is the smallest number of people per senator which when divided into the population in each senate district as shown by the official results of the 1980 federal decennial census with fractions rounded to the nearest whole number results in a senate with thirty (30) senators;

(ii) The ratio for the apportionment of the representatives is the smallest number of people per representative which when divided into the population in each representative district as shown by the official results of the 1980 federal decennial census with fractions rounded to the nearest whole number results in a house with sixty-three (63) representatives;

(iii) *If the number of representatives for any county is rounded to zero (0) under the formula in paragraph (a)(ii)*

of this section, that county shall be given one (1) representative which is in addition to the sixty-three (63) representatives provided by paragraph (1)(ii) of this section;

(iv) If the provisions of paragraph (a)(iii) of this section are found to be unconstitutional or have an unconstitutional result, then Niobrara county shall be joined to Goshen county in a single representative district and the house of representatives shall be apportioned as provided by paragraph (a)(ii) of this section.

(b) Representation in the state senate is hereby apportioned and divided among the several senatorial districts as follows:

(i) Albany county shall have two (2) senators;

(ii) Big Horn county shall have one (1) senator;

(iii) Campbell and Johnson counties combined shall have two senators;

(iv) Carbon county shall have one (1) senator;

(v) Converse county shall have one (1) senator;

(vi) Crook and Weston counties combined shall have one (1) senator;

(vii) Fremont county shall have two senators;

(viii) Goshen and Niobrara counties combined shall have one (1) senator;

(ix) Hot Springs and Washakie counties combined shall have one (1) senator;

(x) Laramie county shall have four (4) senators;

(xi) Lincoln county shall have one (1) senator;

(xii) Natrona county shall have four (4) senators;

(xiii) Park county shall have one (1) senator;

(xiv) Platte county shall have one (1) senator;

(xv) Sheridan county shall have two (2) senators;

(xvi) Sublette and Teton counties combined shall have one (1) senator;

(xvii) Sweetwater county shall have three (3) senators; and

(xviii) Uinta county shall have one (1) senator.

(c) Representation in the state house of representatives is hereby apportioned and divided among the several representative districts as follows:

(i) Albany county shall have four (4) representatives;
(ii) Big Horn county shall have two (2) representatives;
(iii) Campbell county shall have three (3) representatives;
(iv) Carbon county shall have three (3) representatives;
(v) Converse county shall have two (2) representatives;
(vi) Crook county shall have one (1) representative;
(vii) Fremont county shall have five (5) representatives;
(viii) Goshen county shall have two (2) representatives;
(ix) Hot Springs county shall have one (1) representative;
(x) Johnson county shall have one (1) representative;
(xi) Laramie county shall have nine (9) representatives;
(xii) Lincoln county shall have two (2) representatives;
(xiii) Natrona county shall have nine (9) representatives;
(xiv) Niobrara county shall have one (1) representative;
(xv) Park county shall have three (3) representatives;
(xvi) Platte county shall have two (2) representatives;
(xvii) Sheridan county shall have three (3) representatives;
(xviii) Sublette county shall have one (1) representative;
(xix) Sweetwater county shall have five (5) representatives;
(xx) Teton county shall have one (1) representative;
(xxi) Uinta county shall have two (2) representatives;
(xxii) Washakie county shall have one representative; and
(xxiii) Weston county shall have one (1) representative.
(Laws 1981, ch. 7, § 1) (emphasis supplied).

STATEMENT OF THE CASE

The 1981 Wyoming Legislative Apportionment scheme grants one sparsely populated county a representative in the state house although its population was insufficient to justify one representative.

From a holding by the three-judge District Court upholding the plan and Wyoming's constitutional provision mandating the county be given a representative, plaintiffs below appeal.

SUMMARY OF THE ARGUMENT

I. The Equal Protection Clause has been violated.

A. Wyoming Statutes § 28-2-109(iii) and (c)(xiv) and Article 3, Section 3 of the Wyoming Constitution are unconstitutional; and

B. There has been an improper, illegal dilution of the voting privileges of the Appellants and other citizens and electors of Wyoming in violation of the Fourteenth Amendment, Constitution and Statutes of the United States of America.

The 64 Plan and Article 3, Section 3 of the Wyoming State Constitution are unconstitutional because they give a county a representative solely because it is a political subdivision and without regard to population.

There has been an improper, illegal dilution of the voting privileges of Appellant and other citizens and electors of Wyoming since the 64 Plan has an overall relative range of 89%.

II. There are no overriding state policies justifying violation. There are no legitimate considerations incident to the effectuation of a rational state policy justifying violation of the Amendments, Constitution and Statutes of the United States of America and the State of Wyoming.

There are no overriding state policies justifying violation of the Equal Protection Clause, Constitution and Statutes of the United States of America and the State of Wyoming.

CASE BELOW

I.

FACTUAL BACKGROUND

The 1980 Federal Decennial Census reflected the population of the State of Wyoming had grown by 137,141 from 332,416 to 469,557 or, in other words, by 24%, while one of Wyoming's twenty-three counties, Niobrara, experienced no population growth. Niobrara county's population stabilized at 2,924 during the ten-year period from 1970 to 1980.

The Wyoming State Legislature, after review of the Federal Decennial Census as mandated by the Constitution enacted the 1981 Apportionment Law, awarded Niobrara County a representative even though, by application of statutory formula, the county should not have received a representative of its own. Wyo. Const. art. 3, § 48; W. S. § 28-2-109(a)(ii), (iii) and (c)(xiv) (1981).

Although the Wyoming State Constitution provides each county shall have at least one senator and one representative, an earlier three-judge panel held that to require each county be represented by at least one senator was a violation of the Equal Protection Clause. Wyo. Const. art. 3, § 3; *Schaefer v. Thomson*, 240 F.Supp. 247 (D. Wyo. 1964). The *Schaefer* Court further recognized the Equal Protection Clause requires both houses of a bicameral state legislature be apportioned substantially on a population basis. A county should not have its own representative unless the apportionment is based upon population and the county's population merits one or more representatives.

The Wyoming State Legislature recognized granting a representative to Niobrara County would probably be declared unconstitutional. Consequently, the legislature provided an alternative in the event its action was deemed unconstitutional: Niobrara County would be joined with Goshen

County in a single representative district and the total number of representatives would be decreased from 64 to 63. W. S. § 28-2-109(iv)(1981). In the meantime, Niobrara County was to have its "day in court" (Transcript, page 376, line 19 through page 377, line 13). Population was not a motivating factor in giving Niobrara County a representative.

By awarding Niobrara County a representative, the Wyoming House of Representatives became a 64-member body. This is hereinafter designated as the "64 Plan." W. S. § 28-2-109(iii) and (c)(xiv)(1981). The parties have stipulated the overall relative range or percentage deviation of the 64 Plan is 89% and the ratio is 3.25 to 1. (Exh. A314).

If Niobrara County is combined with Goshen County, the Wyoming House of Representatives is a 63-member body. This is designated as the "63 Plan." W. S. § 28-2-109(a)(iv)(1981). The parties have stipulated the overall relative range or percentage deviation of the 63 Plan is 66% and the ratio is 2.09 to 1. (Exh. A316). The difference, therefore, in giving Niobrara County one representative as opposed to combining Niobrara and Goshen Counties is measurable and results in a difference in overall relative range of 23% and a ratio of 1.16 to 1.

Appellants recognize the vulnerability of the 1981 Wyoming House of Representatives Apportionment, in total, although the only issue tried below involved the legislative grant of the one representative to Niobrara County. *Maryland Committee v. Tawes*, 377 U.S. 656, 12 L.Ed.2d 595, 84 S.Ct. 1442 (1963).

II.

RATIONALE

A prima facie equal protection violation under the Fourteenth Amendment occurs when the overall relative range is greater than 9.9%. *Connor v. Finch*, 431 U.S. 407 (97 S.Ct.

1828) (1977). The 64 Plan overall relative range was 89% and the 63 Plan overall relative range was 66%. Even the difference between the 64 Plan and the 63 Plan, an overall relative range of 23%, is greater than 9.9%.

In the District Court, the three-judge panel found the 64 Plan constitutional because a comparison of the 64 Plan with the 63 Plan was not statistically significant and not constitute invidious discrimination. The District Court concluded the integrity of the county political boundaries should remain intact because counties have historically acted as primary administrative agencies within the state.

ARGUMENT

I.

THE EQUAL PROTECTION CLAUSE HAS BEEN VIOLATED

1. ***Wyoming Statutes § 28-2-109(iii) and (c)(xiv) and Article 3, Section 3 of the Wyoming State Constitution are unconstitutional; and,***

2. ***There has been an improper, illegal dilution of the voting privileges of the Appellants and other citizens and electors of Wyoming in violation of the Fourteenth Amendment, Constitution and Statutes of the United States of America.***

The 64 Plan and Article 3, Section 3 of the Wyoming State Constitution are unconstitutional because they give a county a representative solely because it is a political subdivision, and without regard to population.

There are no overriding state policies which can justify the 89% overall relative range or 3.25 to 1 ratio of the 64 Plan. A voter in Niobrara County now has 3.25 times greater representation than his counterpart in Washakie County. An improper, illegal dilution of the voting privileges of the Appellants and other citizens and electors of Wyoming in violation of the Equal Protection Clause has occurred.

Appellants did not contend "invidious discrimination" was the guideline for determining the constitutionality of the

64 Plan but consistently maintained a violation of the Equal Protection Clause had occurred because of the greater weight given to votes in Niobrara County. *Complaint, Plaintiff's Pretrial Submission.* In fact, the issues presented below are identical to the ones before this Court.

The District Court found the individual vote dilution improvement ranged from 0.0003 for a voter in Teton County to 0.0023 for a voter in Laramie County if the 63 Plan were to be used in lieu of the 64 Plan. The District Court found this to be de minimis and, therefore, not invidious discrimination. Appellants know of no legal precedence for this analysis.

Rather than rely on the modern, overall relative range test, the District Court applied the test of measuring the minimum number of persons electing a majority number of representatives. Although this analysis was used in the 1960s, it has been abandoned in favor of the more accurate statistical measurement methods of vote dilution, such as, ratio and overall relative range. *Swann v. Adams,* 285 U.S. 440, 17 L.Ed.2d 501, 87 S.Ct. 569 (1967); *Kilgarlin v. Hill,* 386 U.S. 119, 17 L.Ed.2d 771, 87 S.Ct. 820 (1967); *Whitcomb v. Chavis,* 403 U.S. 124, 29 L.Ed.2d 363, 91 S.Ct. 1858 (1971); *Mahan v. Howell,* 410 U.S. 315, 35 L.Ed.2d 320, 93 S.Ct. 979 and 36 L.Ed.2d 316, 93 S.Ct. 1475 (1973); *Gaffney v. Cummings,* 412 U.S. 735, 37 L.Ed.2d 298, 93 S.Ct. 2321 (1973); *White v. Regester,* 412 U.S. 744, 37 L.Ed.2d 314, 93 S.Ct. 2332 (1973); *Chapman v. Meier,* 420 U.S. 1, 42 L.Ed.2d 766, 95 S.Ct. 751 (1975); *Connor v. Finch,* 431 U.S. 407, 52 L.Ed.2d 465, 97 S.Ct. 1828 (1976).

Since the overall relative range is nearly nine times greater than the prima facie plateau created in *Connor, supra,* one must conclude a prima facie case of an improper, illegal dilution of appellants' voting privileges in violation of the Equal Protection Clause was established. Unless there are legitimate considerations incident to the effectuation of a rational state policy which would justify the violation, the 64 Plan must fall. *Mahan v. Howell, supra.*

II.

THERE ARE NO OVERRIDING STATE POLICIES JUSTIFYING VIOLATION

There are no legitimate considerations incident to the effectuation of a rational Wyoming State Policy justifying violation of the Equal Protection Clause, Constitution and Statutes of the United States of America and the State of Wyoming.

There are no overriding state policies justifying violation of the Equal Protection Clause, Constitution and Statutes of the United States of America and the State of Wyoming.

In *Reynolds v. Sims*, the Court noted divergences from a strict population standard may be permissible to effectuate rational state policy. *Reynolds v. Sims*, 377 U.S. 533, 12 L.Ed.2d 506, 84 S.Ct. 1362 (1964).

The basic guidelines and standards of the *Reynolds* case are marked with flexibility. The Court reasoned that there may be room for deviation but only if the reapportionment plan is based substantially on population and an individual voter's rights are not diluted significantly. The overriding objective must be substantial equality among the various districts. Political subdistricts have no special status in the eyes of the Constitution.

The Supreme Court has stated that the maintenance of the integrity of political subdivisions, provision for compact districts of contiguous territory, and recognition of the natural or historical boundaries may be legitimate considerations which justify some deviation from a strict population standard. *Swann v. Adams, supra.*

To date, *Mahan v. Howell, supra,* is the only case where the Supreme Court found justification for upholding a plan having an overall relative range of more than 9.9%. The *Mahan* case involved an overall relative range of 16.4% compared to an overall relative range in the 64 Plan of 89%. The majority noted the Virginia General Assembly's authority to enact local legislation dealing with particular political subdivi-

sions was a significant and substantial aspect of the Virginia legislature's power. No similar legislative power exists in Wyoming. To the contrary, special and local laws are generally prohibited. Wyo. Const. art. 3, § 27.

The Supreme Court noted these other justifying factors:

1. The Apportionment Plan consistently avoided fragmentation of political subdivisions, and

2. Only minimum population deviations were produced while political boundaries were kept intact.

Although the 64 Plan may avoid fragmentation of political subdivisions, the Apportionment Plan is marked by great population deviations.

At trial, great reliance was placed upon Wyoming's vastness, sparse population, distance between communities and the attendant expense of communication and travel. Emphasis was placed upon Wyoming's history and tradition. All the same, area or homesite, occupation, geography, history and tradition, and economic and group interests are not relevant, rational policy considerations which justify deviation from a strict population principle:

> ". . . there is no indication in the Constitution that homesite or occupation affords a permissible basis for distinguishing between qualified voters in a state." *Reynolds v. Sims, supra,* p. 527.
>
> "The weight of a citizen's vote cannot be made to pend on where he lives." *Reynolds v. Sims, supra,* p. 530.
>
> ". . . but neither history alone, nor economic or other sorts of group interests are permissible factors in attempting to justify disparities from population based representation. Citizens, not history or economic interest, cast votes." *Reynolds v. Sims, supra,* p. 537.
>
> "Considerations of history and tradition . . . do not and . . . (can) not, provide a sufficient justification for the substantial deviation from population based

representation . . ." *Maryland Committee V. Tawes, supra,* p. 675.

". . . Considerations of area alone provide an insufficient justification for deviations of the Equal Protection Principle. Again, people not land or trees or pastures vote." *Reynolds v. Sims, supra,* p. 537-538.

"Geographical, historical, topographic and economic considerations fail to provide adequate justification for substantial disparities from population-based representation in the allocation of state . . . seats . . ." *Lucas v. Forty-fourth General Assembly of the State of Colorado,* 377 U.S. 713, 12 L.Ed.2d 632, 738, 84 S.Ct. 1472 (1964).

Nor has the Court accepted the justification that it is necessary to protect "insular minorities," or to accord recognition to a state's heterogeneous characteristics, *Lucas v. Forty-fourth General Assembly of the State of Colorado, supra,* p. 648.

Wyoming is a unique state, but no more nor no less unique than any other state. In fact, Wyoming is not so unlike its neighboring state of North Dakota.

In reviewing the North Dakota Court ordered apportionment plan of *Chapman v. Meier,* 420 U.S. 1, 42 L.Ed.2d 766, 95 S.Ct. 721 (1975), the Supreme Court specifically rejected the justifications now promoted by Appellees. Justifications of sparse population and the state's goal of observing geographical boundaries and existing political subdivisions were deemed insufficient. The Supreme Court further rejected justifications of an absence of electorally victimized minorities and the division of the state by a river.

The Supreme Court has admonished that in all instances:

"(P)ermitting deviations from population-based representation does not mean that each local governmental unit or political subdivision can be given separate representation, regardless of population.

Carried too far, a scheme of giving at least one seat in one house to each political subdivision (for example, to each county,) could easily result in the total subversion of the equal population principle in that legislative body. This could especially be true in a state where the number of counties is large and many of them sparsely populated and the number of seats in the legislative body does not significantly exceed the number of counties. Such a result would be unconstitutionally impermissible and careful judicial scrutiny must of course be given, in evaluating state apportionment schemes, to the character as well as the degree of deviations from a strict population basis. But if, even as a result of a clearly rational state policy of according to some legislative representation to political subdivision population is submerged as the *controlling* consideration in the apportionment of seats in the particular legislative body, then the right of all of the state's citizens to cast an effective and adequately weighted vote would be unconstitutionally impaired." (Emphasis added.) *Reynolds v. Sims, supra,* p. 538-539.

CONCLUSION

Under both the 64 Plan and the 63 Plan there is a substantial percentage deviation. Voters in Niobrara County cast ballots weighted as much as 3.25 of those cast elsewhere in Wyoming. The District Court found this to be de minimis.

The state legislature granted a seat in the state house based purely on a political subdivision basis and not based on population. Such a policy has violated and will continue to violate the rights of Appellants and those similarly situated in Wyoming and elsewhere.

The harm is substantial and no overriding state policy would be undermined by combining Niobrara County with a neighboring county.

The three-judge District Court established a dangerous precedent and erroneously applied outdated law. The decision must be corrected.

Appellants request the following relief:

1. The apportionment of the Wyoming State Legislature as provided by W. S. § 28-2-109(iii) and (c)(xiv) and Article 3, Section 3 of the Wyoming State Constitution be declared unconstitutional.

2. The Appellees, and each of them, as well as any and all other persons acting in concert with them, be forever enjoined and restrained from taking any steps in the furtherance of conduct of elections for members of the House of Representatives of the Wyoming State Legislature, in accordance with the provisions of W. S. § 28-2-109(iii) and (c)(xiv) or any Article of the Wyoming State Constitution which affords or might afford a similarly disproportionate apportionment.

3. The Court award the Appellants reasonable attorney's fees as provided for in 42 U.S.C. § 1988 and 43 U.S.C. § 1973 L(e).

4. The Court provide such other and further relief as may be necessary to give full force and effect to the determination of this Court and afford full protection and relief to Appellants.

DATED this 18th day of November, 1982.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Sue Davidson, the attorney for Appellants herein, hereby certify that on the 18th day of November, 1982, I served copies of the foregoing Brief in Opposition to Motions to Affirm on the parties hereto as follows:

1. On Appellees-Intervenors, by mailing copies in a duly addressed envelope, with first-class postage prepaid, to Richard Barrett, attorney for Appellees-Intervenors, Hathaway, Speight and Kunz, One Pioneer Avenue, Suite 402, Cheyenne, Wyoming 82001.

2. On Appellees-State Officials, by mailing copies in a duly addressed envelope, with first-class postage prepaid, to Steve Freudenthal, Attorney General, State of Wyoming, Capitol Building, Cheyenne, Wyoming 82002, attorney for Appellees-State.

/s/SUE DAVIDSON
ATTORNEY FOR APPELLANTS

STATE OF WYOMING)
) ss.
COUNTY OF LARAMIE)

The foregoing Certificate of Service was acknowledged before me this 18th day of November, 1982, by SUE DAVIDSON.

Witness my hand and official seal.

/s/KELLIE A. ERICKSON
NOTARY PUBLIC

My Commission Expires September 11, 1983.

FILED
JAN 10 1983
ALEXANDER L. STEVAS
CLERK

No. 82-65

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

MARGARET R. BROWN, et al.,
Appellants,
v.
THYRA THOMSON, Secretary of the
State of Wyoming, et al.,
Appellees.

BRIEF OF APPELLEES

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QUESTIONS PRESENTED

Whether the State of Wyoming violated the Equal Protection Clause of the Fourteenth Amendment by reserving one of sixty-four seats in its House of Representatives for the people of Niobrara County where the allocation of that seat had no significant effect on the appellants, who reside in other Wyoming counties.

PARTIES TO THE PROCEEDINGS

Additional defendants in the district court were:

Ed Herschler, Thyra Thomson, Shirley Wittler and James B. Griffith, as members of the State Canvassing Board, and Ed Herschler, as Governor of the State of Wyoming.

Intervening Defendants in the district court were:

James L. Thompson, Gerald D. Bardo, Russell Thompson, Kenneth A. Gropp, Richard G. Pfister, Peter M. Hansen, Gertrude Chamberlain, Betty Percival, Mary L. Burke, Board of County Commissioners of the County of Niobrara, Kenneth R. Freeman, as a County Commissioner of the County of Niobrara and in his individual capacity, F. Everett Brooks, as a County Commissioner of the County of Niobrara and in his individual capacity, and Louis L. Landkamer, as a County Commissioner of the County of Niobrara and in his individual capacity.

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CONSTITUTIONAL AND STATUTORY PROVISIONS

The text of the Wyoming Constitution and statutes pertaining to legislative apportionment are set out in Appendix A hereto, at pp. 1a, 66a. Other provisions pertinent to state and county government, taxation and revenue, school finances and the relationships among state and local governments are also set out in Appendix A. (A map of Wyoming depicting county lines is provided at Appendix B.)

STATEMENT OF THE CASE

Niobrara County is one of twenty-three counties in Wyoming. Historically, the citizens of Niobrara County have had their own representative in the State House of Representatives. In order to ensure that the people of Niobrara County continue to receive effective representation in that body and to maintain Wyoming's tradition of county-oriented government, the Wyoming Legislature adopted in 1981 a reapportionment plan that created a 64-member House of Representatives with one representative to be elected from Niobrara County. The Legislature also provided that, if the 64 plan were held to be unconstitutional, then the House would be composed of 63 members and the citizens of Niobrara County would be forced to share a state representative with neighboring Goshen County. The plaintiffs below, appellants herein, subsequently brought suit claiming that the 64 plan violated the Equal Protection Clause of the Fourteenth Amendment and requesting that the 63 plan be used instead.

A. The History of Wyoming Reapportionment

The Wyoming Legislature has been reapportioned following each decennial census since 1960. Although each plan has been challenged on equal protection grounds, the federal

courts have consistently upheld the apportionment of the Wyoming House of Representatives. In so doing, the courts consistently have recognized the strong state interest in drawing electoral lines along county boundaries.

In 1964, the United States District Court for the District of Wyoming ("the District Court") first considered a constitutional challenge to the makeup of the State Legislature. The District Court struck down the apportionment of the State Senate because it had not been apportioned on a population basis. *Schaefer v. Thomson*, 240 F. Supp. 247, 251 (D. Wyo. 1964). The District Court, however, upheld the reapportionment of the Wyoming House of Representatives. Although the House apportionment was not mathematically perfect, the District Court recognized that population deviations were justified by the State's desire to ensure adequate representation for small counties like Niobrara County. 240 F. Supp. at 251.

In 1965, the District Court ordered into effect an apportionment plan for a 30-member State Senate, *Schaefer v. Thomson*, 251 F. Supp. 450, 452 (D. Wyo. 1965). The District Court stressed that the plan "preserved the established county boundaries" wherever possible. *Id.*, at 452. Only one county was divided by the plan and the District Court emphasized that that line of division was "easily ascertainable by a natural boundary" and was in accord with "population and geographic" considerations. *Id.*, at 453. The District Court also reaffirmed its previous determination that the reapportionment of the State House of Representatives was constitutional. On appeal, this Court affirmed. *Harrison v. Schaeffer*, 383 U.S. 269 (1966) (*per curiam*).

Following the 1970 census, the House and Senate were reapportioned by the Wyoming Legislature and those reapportionments were once again challenged on constitutional grounds. *Thompson v. Thomson*, 344 F. Supp. 1378 (D. Wyo. 1972). Again, the District Court approved the reapportionment of the House. *Id.*, at 1380. The District Court

recognized that the Senate plan was largely based on the 1965 court-ordered redistricting, which "attempted to preserve historical county lines." *Id.* The Senate plan was upheld because changes from the 1965 plan were made to reflect population changes. *Id.*, at 1380-81.

B. The 1981 Wyoming Reapportionment

In 1981, after the most recent census, the Wyoming Legislature again reapportioned the State Senate and the House of Representatives. The Legislature drew districts for a 30-member Senate and a 64-member House of Representatives. When it considered the allocation of House seats, the Legislature recognized that a scheme based purely on population distribution would leave Niobrara County as the only county in the State without its own representative because, in the ten years from 1970 to 1980, the population of Niobrara County remained stable while the State population increased. In order to avoid such a loss of representation, the Legislature provided that Niobrara County shall have one representative to the 64-member House. Wyo. Stat. § 28 2-109.

In enacting the 64 plan the Legislature carefully balanced the interests of Niobrara County against the effect of the reapportionment scheme on the remainder of the State. Recognizing that the "needs of each county are unique," the Legislature stated that "the opportunity for oppression of the people of this state or any of them is greater if any county is deprived a representative in the state legislature than if each is guaranteed at least one representative." Joint Appendix ("J.A.") 68; *see also* App. A. at 66a to 71a (reprinting the entire 1981 apportionment law). Second, the Legislature found that the effect of the 64 plan on the remainder of the State is "trivial when weighed against the need to maintain the integrity of county boundaries." *Id.* Third, the Legislature determined that expansion of the Legislature, which would allow more districts with fewer constituents, would be impractical. *Id.*

The Legislature recognized the possibility of attack on the constitutionality of the allocation of a representative to Niobrara County. Accordingly, it provided that if (and only if) the 64 plan were "found to be unconstitutional," then the State House of Representatives would have 63 members with a single representative to be shared between Niobrara County and Goshen County. Wyo. Stat. § 28-2-109(a)(iv).

C. The District Court Proceedings

This case began when seven Wyoming voters filed suit challenging the constitutionality of the 64 plan. Appellants alleged that the reapportionment act constitutes "a systematic and purposeful discrimination" against them. Appellants' Complaint requested the District Court to enjoin the State from "unlawfully reapportioning the Wyoming Legislature for the purposes of granting a seat in the House of Representatives to Niobrara County." J.A. 4. In place of the 64 plan appellants requested the District Court to implement the 63 plan. Trial Transcript ("Tr.") 14-15; *see* 536 F. Supp. at 781.

At trial, the State presented evidence demonstrating and explaining the effect of the 64 plan on the appellants. A series of exhibits compared the minimum percentage of the State's population necessary to elect a majority of the members of the House under the 64 plan with the percentage necessary to do the same under the 63 plan. *See* Joint Appendix Exhibits ("J.A. Ex.") A507-A508. Under the 64 plan, 46.65% of the State's population theoretically can elect 51.56% of the representatives whereas the 63 plan would permit 46.56% of the population to elect 50.79% of the House. *Id.* A statistical expert testified that the difference between the plans is insignificant. J.A. 40 (testimony of Phil Kiner).

The State also presented evidence demonstrating the importance of counties to the governmental structure of Wyoming. County governments provide law enforcement

and health services and act as the primary vehicle through which the State collects taxes. J.A. 17 (testimony of Gerald Fox). Because counties are limited in the amount of revenue they can collect for their own purposes, they are inevitably dependent upon the State Legislature for the distribution of revenue. *Id.*, at 17-20. The Legislature provides supplemental revenues to its counties through several methods, including direct appropriations to political subdivisions. J.A. 46-47 (testimony of Sharron Kelsey); 52-54 (testimony of Don Collamore). In the recent past, the Legislature has enacted laws for the specific benefit of counties and local school districts, which generally are co-extensive with county lines. *Id.* The ability of counties to attract new business and industry is heavily dependent upon the methods used by the Legislature to allocate funds among local governments. J.A. 58, 61-62 (testimony of James G. Thompson).

D. The District Court Opinion

After trial, the three-judge District Court unanimously rejected the appellants' attack on the allocation of a representative to Niobrara County. *Brown v. Thomson*, 536 F. Supp. 781 (D. Wyo. 1982); Appendix to Jurisdictional Statement ("A") 17. The court emphasized two holdings. First, the court found appellants' claim to be *de minimis*. Statistical evidence demonstrated that use of the 64 plan instead of the 63 plan would have only a "trivial" effect on the ability of the appellants to elect a majority of the House, *id.*, at 783; A. 24. Second, the court held that those differences between votes that did exist as a result of the 64 plan were amply supported by the established state interest in preserving county government. The court emphasized that, "[c]ounties have always been a major form of government" in Wyoming and that counties remain "the primary administrative agencies of the State government." *Id.*, at 784; A. 27. Without separate representation, "the interests of the people of Niobrara County would be virtually unprotected" because the residents of Niobrara Coun-

ty would form a minority of a joint legislative district with neighboring Goshen County. *Id.;* A. 26.

Judge Doyle, concurring, emphasized that the Court faced a "narrow" issue pertaining to "a single county." *Id.*, at 785; A. 28. Judge Doyle reiterated that "the representation for Niobrara County did not injure the other counties," and that "the representation by county approach . . . has been historically followed in Wyoming." *Id.*, at 786, 788; A. 29, 30. Thus, Judge Doyle concluded that the 64 plan met the constitutional standards enunciated by this court.

E. Subsequent Events

Appellants petitioned this Court to note probable jurisdiction of their appeal from the three-judge court. On October 4, 1982, this Court granted appellants' request and set this case for plenary consideration.

On November 2, 1982, the voters of the State of Wyoming elected the State Legislature pursuant to the 64 plan. The voters of Niobrara County elected a new state representative to represent them in the State Capital.

SUMMARY OF ARGUMENT

The only issue presented to the District Court, and the only issue properly presented to this Court, concerns the claim by appellants that the Wyoming Legislature violated the Equal Protection Clause of the Fourteenth Amendment by including within the 64-member State House of Representatives one seat for the people of Niobrara County. Appellants' claim is insufficient. First, appellants have failed to support their allegation that they have been the victims of purposeful discrimination. Proof of purposeful discrimination is necessary to support a finding that the Equal Protection Clause has been violated. Appellants did not — and cannot — demonstrate that enactment of the 64 plan was for any but the explicitly stated legislative purpose — to ensure effective representation for the people of Niobrara County.

Second, appellants have failed to demonstrate that the challenged classification of voters into different electoral districts violates the principle of equal treatment guaranteed by the Equal Protection Clause. Apportionment plans are invalid under the Equal Protection Clause if they impinge a voter's fundamental interest in remaining free from vote dilution. The apportionment plan does not infringe that fundamental interest because it does not create a substantial risk that a small percentage of voters will be able to elect a majority of the members of the House. Since no fundamental interest is threatened by the 64 plan, the proper standard of review for the appellants' remaining claim of unequal treatment is the rational basis test.

The apportionment plan easily passes this standard. The use of county lines to draw legislative boundaries furthers the historic interest in preserving county boundaries and helps preserve the strength of the current structure of State government. In Wyoming, counties are the basic unit of local government. They are required by the State to assume many governmental functions and they are the channel

through which many state expenditures flow. Wyoming's vital interest in maintaining the strength of county government and ensuring that county citizens have effective access to the state government outweighs the *de minimis* impact of the 64 plan on appellants.

ARGUMENT

I.

THE ONLY QUESTION PROPERLY PRESENTED TO THIS COURT CONCERNS THE CONSTITUTIONALITY OF THE ALLOCATION OF ONE STATE REPRESENTATIVE TO NIOBRARA COUNTY

This case presents a single, narrow question: Whether the State of Wyoming violated the Equal Protection Clause of the Fourteenth Amendment by allocating to Niobrara County one of sixty-four representatives to the State House of Representatives in a manner that did not dilute significantly the votes of other citizens of Wyoming. As appellants recognize, "the only issue tried below involved the legislative grant of the one representative to Niobrara County." Brief for Appellants at 14. Indeed, the District Court, both at trial, *see* J.A. 29, and in its opinion, emphasized that "[a]t issue before this Court is the relatively simple question whether or not the allocation of a representative to Niobrara County constitutes invidious discrimination and, as such, is unconstitutional." 536 F. Supp. at 781, A. 20; *see also* J.A. 4 (Appellants' Complaint ¶ 7); Pre-Trial Transcript at 21-22.

Nonetheless, appellants suggest that this Court may examine the constitutionality of the entire reapportionment scheme. *See* Brief for Appellants at 14.[1] But the general

1. Appellants rely on *Maryland Committee v. Tawes*, 377 U.S. 656, 673 (1964), in which this Court, considering a challenge to the constitutionality of the Maryland Senate, held it would also consider the constitutionality of the apportionment of the Maryland House of Delegates although the lower courts had not considered that issue. 377 U.S. at 673. The *Tawes* decision may demonstrate that this Court has the power to consider issues not determined by the lower courts but it cannot be read as requiring this Court always to exercise that power. To the contrary, the decision in *Gaffney v. Cummings*, 412 U.S. 735, 739 n.5 (1973) demonstrates that this Court

rule, which should be applied in this case, is that this Court will not ordinarily consider a constitutional challenge for the first time on appeal. *See Jenkins v. Anderson*, 447 U.S. 231, 234 n.1 (1980); *Tacon v. Arizona*, 410 U.S. 351, 352 (1973) (*per curiam*). This rule serves two important interests. First, it accords the lower courts proper respect, by refusing to allow parties to withhold issues from their consideration. Second, it also affords this Court the benefit of the views of lower courts, which may be more familiar with the factual record and issues of state law or practice than this Court. *See Jenkins v. Anderson*, 447 U.S. at 234 n.1.

These purposes are particularly important in this case. The parties did not introduce evidence designed to address the constitutionality of the reapportionment generally. Had the apportionment of the entire plan been at issue, the State would have introduced evidence explaining the legitimate reasons relied upon by the Legislature for drawing electoral districts other than the one encompassing Niobrara County. Such evidence would have been clearly relevant, *see Mahan v. Howell*, 410 U.S. 315, 323 (1973), and its absence from the record prejudices the State's ability to confront new issues for the first time in this Court. Second, this Court would be aided by initial consideration of the issues — particularly the nature of the state interests that underlie the reapportionment plan — by the three-judge District Court, which included both district court judges now sitting in Wyoming.

For these reasons, this Court should refuse the appellants' request that the constitutionality of the reapportionment act as a whole be considered for the first time by this Court.

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will not generally consider a reapportionment issue not raised by the parties. In that case, the Court considered only the constitutionality of the composition of one house of the Connecticut legislature because no challenge had been made to the composition of the other house. The Court clearly did not regard the *Tawes* decision as requiring it to consider all issues that potentially may be raised concerning the constitutionality of the apportionment of a bicameral legislature.

Accordingly, the only question properly before this Court is whether the 64 plan, which accords Niobrara County one representative, may be constitutionally employed instead of the 63 plan, which combines Niobrara and Goshen Counties into one representative district.

II.

THE APPELLANTS FAILED TO MAKE THE NECESSARY SHOWING THAT THEY ARE THE OBJECTS OF PURPOSEFUL DISCRIMINATION

In their complaint filed in District Court, appellants alleged that the passage of a reapportionment plan allocating a representative to Niobrara County constituted "purposeful discrimination" in violation of the Equal Protection Clause of the Fourteenth Amendment. J.A. 4. Although appellants accurately understood that their allegation of "purposeful discrimination" is constitutionally mandated, they introduced no evidence at trial that could support the necessary finding of intent to discriminate. Accordingly, the appellants' claim must fall on this ground alone.[2]

This court — in a series of cases from *Washington v. Davis*, 426 U.S. 229 (1976) to *Rogers v. Herman Lodge*, 102 S.Ct. 3272 (1982) — has emphasized that the Equal Protection Clause "can be violated only by purposeful discrimination." *General Building Contractors Ass'n v. Pennsylvania*, 102 S.Ct. 3141, 3150 (1982).[3] A finding of purposeful discrimination requires more than a showing of disparate impact or a showing that legislators may have been aware that adverse consequences would fall upon a particular group. Rather, that standard "implies that the decisionmaker, in this case a state legislature, selected or

2. The District Court did not explicitly address this issue. But, as noted above, the appellants clearly proffered the allegation and, moreover, the State denied that purposeful discrimination existed. Answer at ¶7. The existence of purposeful discrimination was thus properly presented to the three-judge court. Because this Court is reviewing the district court judgment on appeal, *see* 28 U.S.C. § 1253, the whole case — including the issue of purposeful discrimination — is now before this Court. *See Fusari v. Steinberg*, 419 U.S. 379, 387-88 n.13 (1975); *Holder v. Aultman, Miller & Co.*, 169 U.S. 81, 88-89 (1898).

3. *See also, City of Memphis v. Greene*, 101 S.Ct. 1584, 1596 (1981); *Mobile v. Bolden*, 446 U.S. 55, 66 (1980) (plurality opinion); *Personnel Administrator v. Feeney*, 442 U.S. 256, 272 (1979); *Arlington Heights v. Metropolitan Housing Corp.*, 429 U.S. 252, 265 (1977).

reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." *Personnel Administration of Mass. v. Feeney*, 442 U.S. at 272; *see also Mobile v. Bolden*, 446 U.S. at 71 N.17 (1980); *United Jewish Organizations v. Carey*, 430 U.S. 144, 179-80 (1977) (Stewart, J., with whom Powell, J., joined, concurring in the judgment).

Recently, this Court has approved the application of the purposeful discrimination requirement in two cases concerning alleged unconstitutional vote dilution. In *Rogers v. Herman Lodge, supra*, black voters alleged that a system of at-large elections unconstitutionally diluted their voting strength. This Court reaffirmed the "basic principle that only if there is purposeful discrimination can there be a violation of the Equal Protection Clause of the Fourteenth Amendment." 102 S.Ct. at 3277, *quoting Mobile v. Bolden*, 446 U.S. at 66. Similarly, this Court recently affirmed the judgment of a three-judge court that rejected a vote dilution claim brought by Hispanic voters challenging a legislative reapportionment on the ground that the plaintiffs had failed to show intentional discrimination. *Hispanic Coalition, Etc. v. Legislative Reapportionment Com'n*, 536 F. Supp. 578, 585-86 (E.D. Pa. 1982), *aff'd*, 51 U.S.L.W. 3252 (Oct. 5, 1982).[4]

Although appellants alleged purposeful discrimination, they failed to support that allegation at trial. The plaintiffs introduced the testimony of four witnesses, only one of whom, state legislator Charles Scott, claimed to have any personal knowledge of the intent of the Wyoming legislature in enacting the reapportionment plan. Mr. Scott testified

4. Although this Court has most often discussed the requirement of purposeful discrimination in cases alleging unconstitutional racial classifications, it is clear that the requirement is not so limited, *see Personnel Administrator of Mass. v. Feeney*, 442 U.S. 256 (1979). Indeed, this Court "has indicated that attacks on apportionment schemes on racial, political, or economic grounds should be judged by the same standard." *Mobile v. Bolden*, 446 U.S. at 87 n.7 (Stevens, J., concurring); *see Whitcomb v. Chavis*, 403 U.S. 124, 149 (1971) (districts "conceived or operated as purposeful devices to fur-

that the plan was motivated by "an express legislative desire to give Niobrara County its own seat." J.A. 64. Similarly, the reapportionment act itself explains that the plan is designed to further "the interest of each county" in maintaining "a voice in the legislature." J.A. 68.

To be sure, the Legislature recognized that the reapportionment act would have a "trivial" effect on voters similarly situated to appellants. J.A. 68. But that showing is insufficient to demonstrate that the framers of the Wyoming Constitution or the Legislature formed the intent to injure appellants. In *Personnel Administrator of Mass. v. Feeney*, 442 U.S. at 279, this Court considered a challenge to a Massachusetts statute that gave a preference in state employment to veterans. The statute was alleged to discriminate against women, who were less likely than men to be veterans. This Court recognized that the Massachusetts Legislature could have foreseen that implementation of the veterans' preference plan would have a disproportionate impact on women. But the Court held that mere "awareness of consequences" is insufficient; rather proof of purposeful discrimination demanded a showing that the challenged measure was adopted "because of" its impact on women. *Id.* Nothing in the record supported such a showing.

The same is true here. That the Wyoming Legislature may have known that the reapportionment act would have a *de minimis* impact on appellants is insufficient to support a finding of purposeful discrimination. Appellants must show that the reapportionment act was passed "because

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ther racial discrimination" are unconstitutional); *Fortson v. Dorsey*, 379 U.S. 433, 439 (1965) (it would be illegal to operate an apportionment scheme "to minimize or cancel out the voting strength of racial or political elements of the voting population").

Moreover, the "central purpose of the Equal Protection Clause of the Fourteenth Amendment is the prevention of official conduct discriminating on the basis of race." *Washington v. Davis*, 426 U.S. at 239. It is unimaginable, therefore, that the Framers of the Fourteenth Amendment could have intended that plaintiffs claiming racial discrimination shoulder the burden of showing purposeful discrimination, but that other plaintiffs alleging violations of the Equal Protection Clause be relieved of that requirement.

of" such impact. Not only is such proof entirely absent from the record, but it is difficult — if not impossible — to believe that the members of the Wyoming Legislature not from Niobrara County would have formed an intent to discriminate intentionally against their own constituents. Accordingly, the District Court's dismissal of appellants' claim should be affirmed.[5]

5. On occasion, this Court has discussed the "purposeful discrimination" standard in a manner that has emphasized the facial neutrality of the statute under examination. *See Personnel Administrator of Mass. v. Feeney*, 442 U.S. at 273; *but see Rogers v. Herman Lodge*, 102 S. Ct. at 3276 (noting that "a showing of discriminatory intent has long been required in *all* types of equal protection cases charging racial discrimination") (emphasis in original). Of course, the state constitutional provision and the operative portions of the statute attacked by petitioner, *see* Brief for Appellants at 8-10, are facially neutral because they do not expressly indicate any intent to disadvantage voters in more populous counties. But even if the statutes were not facially neutral, the appellants would still have to show that discrimination was purposeful. This Court has never held that the Equal Protection Clause requires a showing of purposeful discrimination only if challenged action is facially neutral. Rather, this Court has emphasized that "discriminatory intent or purpose is required to show a violation of the Equal Protection Clause." *Arlington Heights v. Metro Housing Dev.*, 429 U.S. at 264-65. Where a statute is not facially neutral, it may be more likely that the state acted with purposeful intent and, therefore, the inquiry may shift to the next issue — whether purposeful imposition of a burden on a specified group is nonetheless justified because it is a necessary means of achieving a substantial governmental interest. The inquiry into purposeful discrimination always remains the initial inquiry, however, and if, as in this case, there is no proof of purposeful discrimination, then it is unnecessary to consider whether the state can justify its classifications.

III.

THE DISTRICT COURT PROPERLY HELD THAT THE REAPPORTIONMENT PLAN IS CONSTITUTIONAL

The District Court upheld the constitutionality of the 64 plan finding that the allocation of a representative to Niobrara County (i) did not infringe the fundamental interests of the appellants in remaining free from vote dilution and (ii) created classifications among Wyoming voters that are supported by legitimate state policies. This two-step analysis properly tracks the reasoning of *Reynolds v. Sims*, 377 U.S. 533 (1964). That case requires first that an apportionment scheme must be examined to ensure that it does not impair appellants' fundamental interests in preserving a system of majority control of the state legislature. Second, the challenged plan, like all legislative classifications, must be examined in order to ensure that the means employed — the creation of different electoral districts — are sufficiently related to the advancement of legitimate state goals.

The District Court accurately discerned that the 64 plan withstands constitutional scrutiny under both parts of the two-step analysis. First, the appellants' proof of vote dilution "is insufficient" and shows no more than a "de minimis" effect. 536 F. Supp. at 783; A. 24. Second, the Court, recognized that "counties have always been a major form of government in the State," and that — without the 64 plan — "the interests of the people of Niobrara County would be virtually unprotected." *Id.*, at 784; A. 26.

A. The Allocation of a State Representative To Niobrara County Will Not Dilute Appellants' Votes

In the District Court appellants alleged that they would be injured by implementation of the 64 plan and requested that the 63 plan be put into effect. 536 F. Supp. at 781; A.

21; *see* Tr. 14-15. But the reapportionment plan has no demonstrable adverse effect on the appellants because it is free from the flaw inherent in unconstitutional apportionment schemes: there is no chance that control of the Wyoming Legislature could be held in the hands of only a few voters. As the District Court recognized, the allocation of one representative out of sixty-four to the voters of Niobrara County will not unconstitutionally dilute the vote of any citizen. Accordingly, there is no basis for this Court to disturb the conclusion that "[n]o discomfort is apparent as a result of giving the people of Niobrara County . . . sorely needed representation." 536 F. Supp. at 788; A. 33. (Doyle, J., concurring).

Claims challenging the apportionment of state legislatures involve two distinct interests. Of course, and as discussed in Part III(B) *infra*, any districting plan requires examination to ensure that persons in different districts are being treated fairly. But more is at stake. Although the "right to vote, *per se*, is not a constitutionally protected right," *San Antonio School District v. Rodriquez*, 411 U.S. 1, 35 n. 78 (1973); *see Rodriquez v. Popular Democratic Party*, 102 S.Ct. 2194, 2199 (1982), this Court has recognized that the implementation of constitutionally flawed reapportionment plans may infringe upon the fundamental interest of voters to be free from vote dilution. The interest in voting is of fundamental importance because the ability of each citizen "to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights." 377 U.S. at 562.

The constitutional danger posed by reapportionment schemes is not that they prohibit participation in local election; the danger is that they "may *dilute* the effectiveness of some citizens' votes. . . ." *Kramer v. Union School District*, 395 U.S. 621, 626 (1969) (emphasis in original).[6]

6. The "fundamental interest" analysis also has been employed by this Court to strike down some state requirements that bar a person from voting. Thus, this Court has held unconstitutional the imposition

Where a citizen's vote is diluted, he will find that a majority of the state legislature is controlled by a small minority of the state's population. But legislatures "should be bodies which are collectively responsible to the popular will." *Reynolds v. Sims*, 377 U.S. at 565. Consequently, this Court has refused to "sanction minority control of state legislative bodies . . .", *id.*, and held that, in order to ensure the vindication of majoritarian principles, apportionment plans that appeared to dilute votes substantially would be "carefully and meticulously scrutinized." *Id.*, at 562.

Among the best indicia of vote dilution is the measurement that ascertains whether a small minority of the state population may be able to control the state legislature and thus thwart majority will. *See e.g., Reynolds v. Sims*, 377 U.S. at 545. In a mathematically perfect system, 51% of the state's population will be able to elect a majority of the members of a state's legislative body. In a system in which votes are unconstitutionally diluted, a small percentage of the state's population will be able to elect a majority. For example, the reapportionment scheme held unconstitutional in *Reynolds v. Sims* would have permitted 25.1% of the state's population to elect a majority of the state senate and 25.7% to elect a majority of the state house of representatives. *Id.* In such circumstances, the intervention of the federal judiciary is required in order to ensure that the citizens of a state have the power to control their own government. But this Court has never required that mathematic perfection be achieved. Where a State legislature is apportioned in a manner that does not dilute significantly any citizen's vote, then an apportionment plan will be upheld ever though it is possible for slightly less than 50%

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of a poll tax as a condition for voting, *Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966) and the use of certain durational residence requirements, *Dunn v. Blumstein*, 405 U.S. 330 (1972), while upholding the disenfranchisement of felons, *see Richardson v. Ramirez*, 418 U.S. 24 (1974) and the use of other durational residence requirements, *see Marston v. Lewis*, 410 U.S. 679 (1973); *Burns v. Futson*, 410 U.S. 686 (1973).

of a State's citizens to elect a majority of the legislature. *See Mahan v. Howell*, 410 U.S. 315, 319 (1973).

The State has introduced into evidence the data necessary to measure vote dilution for this and past Wyoming apportionment plans. *See* J.A. Ex. A501-A508. Each chart measures the minimum population necessary to elect a majority of the members of a body of the State Legislature. This analysis is labeled the "worst-case" scenario because it adds together the representatives of the least populated districts in order to determine the smallest number of citizens that could theoretically control a legislative body. Where the figure is close to 50% there is no conceivable basis for concern that the majoritarian principles of *Reynolds v. Sims* may be disrupted by a reapportionment plan.

As the District Court recognized, the appellants in this case cannot show that their votes will be diluted significantly by the provision of a representative to Niobrara County. Under the 64 plan, 46.25% of the State's population can theoretically elect 51.56% of the members of the House. The disparity that might be labeled vote "dilution" is thus 4.91%. If Niobrara County were forced — as the appellants would require — to share one representative with Goshen County, then 46.56% of the state's population would be able to elect 50.79% of the House. The difference would then be 4.23%. J.A. A507-508. The improvement sought by appellants is, therefore, less than one percent.

The direct effect on appellants of the allocation of one representative to Niobrara County can also be measured by examining the extent to which the population of the counties in which appellants reside are represented in the House. The seven counties in which appellants live contain 46.3% of the State's population. Under the 64 plan, these voters are able to elect 43.75% of the State's representatives. If the 63 plan were used, the same population could elect 44.4% of the House. 563 F. Supp. at 782. This difference — of .65% — is the only vote "dilution" that has

been caused by the Legislature's decision to allocate a representative to Niobrara County. As the District Court correctly concluded, "the effect on plaintiffs is best described as *de minimis.*" 536 F. Supp. at 783. *See O'Shields v. McNair,* 254 F. Supp. 708, 719-20 (D.S.C. 1966).[7]

The figures at issue in this case are well within constitutional limits. In the 1965 Wyoming reapportionment, which was affirmed *per curiam* by this Court, *see Harrison v. Schaeffer,* 383 U.S. 269 (1966), the constitutionally permissible districting allowed 47.42% of the State's population to elect 53.33% of the State Senate, J.A. Ex. A504, and 46.54% of the state's population to elect 50.82% of the House, J.A. Ex. A505. The court-approved reapportionment plan implemented in Wyoming after the 1970 census similarly permitted 49.7% of the State's population to elect 56% of the Senate and 46.89% of the State to elect 51.61% of the House, J.A. Ex. A506. The "dilution" caused by the allocation of a representative to Niobrara County is thus within constitutional bounds.[8]

The appellants rely on different statistical measures in order to press their claim of constitutional injury. Brief for Appellants at 15. None of these other measures, however,

7. Evidence proffered to the District Court also shows the minimal difference between the 64 plan and the 63 plan for each individual county in which an appellant resides. J.A. Ex. A604. The "dilution" caused by use of the 64 plan ranges from 3/100ths of 1% to 23/100ths of 1%. The District Court, reviewing these same figures, aptly commented that "[s]uch minor improvement hardly reaches the level of significance." 536 F. Supp. at 783; A. 23.

8. The obvious constitutionality of the apportionment plan can be seen by comparing the figures in this case with the plans struck down by this Court in 1964. Besides the scheme at issue in *Reynolds v. Sims,* discussed above, this Court held unconstitutional plans (i) from New York that permitted 37.5% of the state's population to elect a majority of the state assembly and 38.1% to elect a majority of the state senate, *WMCA, Inc. v. Lomenzo,* 377 U.S. 633, 647-48 (1964); (ii) from Maryland that permitted 14.1% of the state population to elect a majority of the state Senate and 35.6% to elect a majority of the House of Delegates, *Maryland Committee v. Tawes,* 377 U.S. 656, 665, 667 (1964), (iii) from Virginia that permitted 41.1% of the state's population to elect a majority of the state Senate and

focuses so exactly on the fundamental interest identified in *Reynolds v. Sims* — the right to be free from vote dilution. Appellants contend that dilution is demonstrated by two figures: (i) the ratio of the number of persons in the most populated district to the number of persons in the least populated district, and (ii) the maximum percentage variation (or the relative range), which adds together the deviation from the ideal of the least represented district, Washakie County, and the most represented district, Niobrara County. Under the 64 plan, the ratio is 3.25, and the maximum percentage variation is 89%.

These figures are irrelevant for two reasons. First, they measure the impact of a reapportionment plan on only two (here two of 23) districts. Unlike the "minimum population" figures, they largely ignore the effect of a reapportionment plan on the state as a whole.[9] Second, none of the appellants are voters in Washakie County. See J.A. 2-3. This case was not certified as a class action, *see* Tr. 357-59, and, therefore, figures showing the effect of redistricting on one county not resided in by any appellant are legally irrelevant to the claim by appellants that they have suffered tangible injury.[10]

40.5% to elect a majority of the state's House of Delegates, *Davis v. Mann*, 377 U.S. 678, 688-89 (1964); (iv) from Delaware that permitted 22% of the state's population to elect a majority of the state senate and 18.5% to elect a majority of the state house of representatives, *Roman v. Sincock*, 377 U.S. 695, 705 (1964); and (v) Colorado that permitted 33.2% of the state's population to elect a majority of the state Senate, *Lucas v. Forty-Fourth Gen. Assem.*, 377 U.S. 713, 728 (1964).

9. This Court has relied upon the maximum percentage variation to construct a prima facie test for reapportionment challenges. Where the combined variation of the largest and smallest districts is less than 10%, then this Court will presume that a reapportionment plan is constitutional. *See Connor v. Finch*, 431 U.S. 407, 418 (1977). That conclusion is appropriate, because where no district varies very much from the ideal, then the "minimum population" figure will necessarily be very good. But, as this case illustrates, the converse is not always true, particularly where only one district of sixty-four is attacked as being unconstitutionally overrepresented.

10. In addition, it should be noted that the maximum percentage variation is actually less than the maximum percentage variation figure (90%) contained in the 1963 House plan, *see* J.A. A318, which was upheld by the District Court and this Court. *See* text at 2 *supra*.

In sum, appellants have failed to show an unconstitutional burdening of their interest in remaining free from vote dilution. As this Court has emphasized, the Constitution is "intended to preserve practical and substantial rights, not to maintain theories." *Davis v. Mills*, 194 U.S. 451, 457 (1904). In order to make out a valid equal protection claim, plaintiffs must show "that the class which is purportedly discriminated against consequently suffers . . . imposition of a substantial burden." *Califano v. Boles*, 443 U.S. 282, 295 (1979). The 64 plan, as the District Court recognized, does not impose a substantial burden on appellants; indeed the plan has only a "trivial" impact. 536 F. Supp. at 783. The appellants, having wholly failed to demonstrate unconstitutional dilution of their interest in electing members of the State House of Representatives, cannot demonstrate the infringement of a fundamental interest.[11]

B. The Reapportionment Plan Furthers Legitimate State Interests and, Therefore, Does Not Violate the Equal Protection Clause

1. The Reapportionment Plan Should Be Upheld So Long As There Is A Rational Relationship Between the Challenged Classification and the Advancement of Legitimate State Interests

A constitutional claim brought under the Equal Protection Clause of the Fourteenth Amendment requires this Court to determine if legislative classifications are in ac-

11. In *Swann v. Adams*, 385 U.S. 440 (1967), this Court reversed a district court's approval of a Florida apportionment plan despite the fact that the "minimum population" statistics showed no significant vote dilution. *Id.*, at 442-43. But the Court's analysis is completely consistent with ours. Even where no fundamental interest is impinged, a divergent apportionment plan should be examined in order to ensure that the classification of voters into electoral districts advance legitimate state goals. *See* part III(B), *infra*. In *Swann*, where the State made "no attempt to justify" its classification, the apportionment plan could not survive judicial scrutiny. Here, of course, and as the District Court held, the 64 plan directly furthers important state interests. *See* Part III(B)(2), *infra*.

cord with the principle that "all persons similarly circumstanced shall be treated alike." *Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920). The usual standard for judicial review of legislative classifications requires that such classifications be upheld so long as they are "rationally related to achievement of the statutory purposes." *Minnesota v. Clover Leaf Creamery Co.*, 101 S.Ct. 715, 723 (1981) (footnote omitted). This Court has developed a more exacting standard of review for classifications that are based upon "suspect" characteristics, *see McLaughlin v. Florida*, 379 U.S. 184, 192 (1964)[12] or that impinge upon a fundamental interest, *see San Antonio School District v. Rodriquez*, 411 U.S. at 29.

The Court in *Reynolds v. Sims* explained that the existence of a fundamental interest in freedom from vote dilution required a reapportionment plan to be "carefully and meticulously scrutinized." 377 U.S. at 562. Such a careful examination of a fit between legislative goals and means is appropriate where the ability of a majority to govern is threatened, for the ability to cast a meaningful vote is "preservative of other basic and political rights." *Id.; see Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 667-68 (1966) (quoting from *Yick Wo v. Hopkins*, 218 U.S. 356, 370). In this case no individual's vote has been unconstitutionally diluted, see Part III(A) *supra*, and, consequently, there is no danger that the 64 plan will permit a small minority of voters to override the majority's wishes. Because no fundamental interest has been impinged, there is no remaining justification for the use of an unusually stringent standard of judicial review.

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12. There is no contention in this case that the appellants are members of a "suspect class." Indeed, the appellants exhibit none of the characteristics of suspectness: "the class is not saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." *San Antonio School District v. Rodriquez*, 411 U.S. at 28.

This Court has emphasized that where a plaintiff alleges — but cannot demonstrate — the impingement of a fundamental interest, then the proper level of scrutiny for the remaining equal protection claim is the rational basis test. The decision in *Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60 (1978) is illustrative. In that case a group of voters objected to the fact that their community was included within the police, criminal and commercial jurisdiction of the neighboring city of Tuscaloosa although they were not permitted to vote in that city. First, this Court held that the voting rights of the plaintiffs had not been violated because "a government unit may legitimately restrict the right to participate in its political process to those who reside within its borders." 439 U.S. at 68-69. Second, this Court faced the issue whether the exercise of extraterritorial jurisdiction by a municipality bore a "rational relationship to a legitimate state purpose." *Id.*, at 70.

This Court employed the same analysis in *Harris v. McRae*, which concerned a claim that the Hyde Amendment, which limits the use of federal funds to pay for abortions, was unconstitutional. First, the Court rejected the claim that the cutoff in funds impinged the plaintiff's alleged fundamental "liberty" interest. 448 U.S. at 317-19. Second, and after holding that the plaintiffs did not constitute a "suspect" class, the Court considered whether the Hyde Amendment was "rationally related to a legitimate governmental objective." *Id.*, at 324.

The same analysis is appropriate to this case. Because the plaintiffs can show no infringement of their fundamental interest in remaining free from vote dilution, the legislative classification need only be examined under the rational basis test. As we demonstrate in Part III(B)(2), *infra*, the reapportionment plan easily passes this standard.

2. The Allocation of a State Representative to Niobrara County Advances the State Interest in Relying Upon Counties as the Basic Unit of Local Government

This Court has repeatedly emphasized that apportionment plans may reflect a state's policy of insuring the continued strength of county government. In *Mahan v. Howell*, 410 U.S. at 328, this Court upheld a Virginia apportionment plan that advanced "the rational state policy of respecting the boundaries of political subdivisions." That case concerned a court-ordered reapportionment plan that had effectively eliminated the ability of certain local governments to affect the passage of state legislation for their benefit. *Id.* at 324. This Court reversed the lower court apportionment order and reinstated an earlier legislative plan that respected county boundaries. The Court emphasized that: "We are not prepared to say that the decision of the people of Virginia to grant the General Assembly the power to enact local legislation dealing with the political subdivisions is irrational. And if that be so, the decision . . . to provide representation to subdivisions *qua* subdivisions in order to implement that constitutional power is likewise valid when measured against the Equal Protection Clause of the Fourteenth Amendment." *Id.* at 325-26; *see Reynolds v. Sims*, 377 U.S. at 580-81.[13] Of course, the state interest in preserving county lines is not exhausted by the desire of counties to influence local legislation. This Court has noted the "extensive functional interrelationships" between levels of local government that often require "intergovern-

13. Appellants have contended that the Wyoming Legislature, unlike the Virginia General Assembly, does not have the power to pass local legislation. Although the Wyoming Constitution prohibits some local legislation, *see* Art. 3, § 27, it does not purport to bar all local legislation. Indeed, the limitations on local legislation contained within the Wyoming Constitution resemble similar limitations placed on the Virginia General Assembly. *See* Va. Const., Art. IV, § 14.

mental coordination." *Abate v. Mundt*, 403 U.S. 182, 186 (1971); *see Gaffney v. Cummings*, 412 U.S. 735, 749 (1973).

The State of Wyoming has traditionally allocated House seats pursuant to county lines. Both the 1963 and 1971 House apportionment plans drew districts that neither combined any two counties in one district nor divided any county to create a district. *See Schaefer v. Thomson*, 240 F. Supp. at 250 & n.3; *Thompson v. Thomson*, 344 F. Supp. at 1380. That policy was continued in 1981 — the 64 plan neither divided or combined any counties.[14]

The policy of drawing representative districts along county lines represents more than mere historical preference. The State Legislature expressly found that the "needs of each county are unique." The needs of each county must be adequately represented in the Legislature because counties have been and remain "the primary administrative agencies of the State government." *Brown v. Thomson*, 536 F. Supp. at 784; A. 27.

The importance of county government derives from the division of governmental responsibilities in Wyoming. State government in Wyoming is limited; few public services are provided directly by the State. J.A. 16-19 (testimony of Gerald Fox). Rather, the State relies upon county government to assume a wide range of governmental responsibilities, including the maintenance of roads and bridges, the provision of adequate hospital facilities and the prosecution of state offenses. *See* J.A. 17 (testimony of Gerald Fox); Tr. 311-12 (testimony of Kenneth Freeman); Wyo. Stat. 18-3-301 *et seq.* Counties are also required by the State to shoulder the burden of providing the usual panoply of local

14. The history of the reapportionment of the State Senate similarly demonstrates the tradition of drawing districts along county lines. Although the smaller number of senators has made absolute fidelity to county boundaries impossible, even court-ordered apportionment plans have "attempted to preserve historical county lines . . ." *Thompson v. Thomson*, 344 F. Supp. at 1380. The 1981 plan established a 30-member Senate without the creation of even one district that divided a county.

governmental services, ranging from the administration of zoning regulations, *see* Wyo. Stat. 18-5-101 *et seq.*, to the maintenance of solid waste disposal sites, *see* Wyo. Stat. 18-11-101 *et seq.*, to the provision of children's day care centers, *see* Wyo. Stat. 18-13-101.[15]

Because Wyoming has neither an individual nor corporate income tax, counties must work closely with the State to collect revenue. County officers assess, levy, and collect taxes for the counties, school districts, and the state school foundation account. *See* Wyo. Stat. 18-3-801 *et seq.* The State government collects sales and excise taxes for itself and also collects local-option sales tax for counties like Niobrara. *See* Wyo. Stat. 39-6-412, -512, App. pp. 49a-54a. Both Niobrara County and the State thus collect revenue for the benefit of the other.

Counties are, as a practical matter, heavily dependent upon state funding. Although counties have the power to levy some taxes, the State Constitution limits the amount of taxes they can collect. Wyo. Const. Art. 15 §§ 5 & 17, App. p. 2a. The Legislature has assumed considerable responsibility in determining how to fund county governments and school districts, which are generally co-extensive with county boundaries. *See* J.A. 19 (testimony of Gerald Fox).[16] The Legislature has established formulae for the distribution of some state money, *see, e.g.*, Wyo. Stat. 9-7-801, and has on occasion appropriated other funds for the exclusive use of a single county or school district. J.A.

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15. The partisan political structure of the State is also organized along county lines. Political parties are organized, under the aegis of their respective statewide central committees, into county central committees that provide the basic unit of political organization. *See* Wyo. Stat. 22-44-101, -102, -105, -106.

16. The Legislature's responsibility for the funding of local school districts will grow in the future. In November 1982, the citizens of Wyoming adopted a state constitutional amendment that will decrease the amount of local property tax to be retained within each county and increase the amount of state tax levied for the support of public schools. *See* H.J.R. 3, Laws 1981, App. at 58a. The Legislature will thus gain an expanded role in determining how local school districts shall be funded.

46-47 (testimony of Sharron Kelsey); 53-54 (testimony of Don Collamore).[17]

The determination of how to divide state revenues among counties can be of crucial importance to the economic health of a county government and its citizens. Counties that do not receive sufficient state funds "are going to get poorer because they are less and less able to build the kind of communities and infrastructure that would attract new industry." J.A. 61 (testimony of James G. Thompson). As poorer counties become unable to attract new business, "the life of the community, [the] economic base" will diminish. *Id.* Thus, each citizen's vocational and economic interests can be directly affected by the method the State uses to distribute money to his or her county.

The citizens of Niobrara County are particularly threatened. The Chairman of the Board of County Commissioners of Niobrara County testified, "it is vitally important to have adequate access to my representative." Tr. 314 (testimony of Kenneth Freeman).[18] But if, as the appellants request, the 63 plan were implemented, the citizens of Niobrara County would be outnumbered in their representative district by the citizens of Goshen County. J.A. Intervening

17. A state representative's duties do not entail merely voting to distribute proceeds among counties. The State Farm Loan Board, which is a State administrative agency, also distributes State money to county governments for a variety of uses, including the construction of sewer, recreation and courthouse facilities. Annual applications for their revenue greatly exceed available funds. J.A. 53-54 (testimony of Don Collamore). Although state representatives do not vote directly to allocate these moneys, they provide their counties a service by aiding their applications to the Farm Loan Board and by voting on bills containing criteria and guidelines for Board-administered programs. J.A. 55 (testimony of James G. Thompson).

18. Mr. Freeman further explained that: "To me the vital part is that the constituency that elects me also elects my representative. Consequently, if he is not doing the job, I can let them know. If he is from another county, a board of commissioners in my county has no control over the board of commissioners in another county. So that is why to me it is so important that the constituents that elect me and fellow board members also elect our representative. Then we are responsible to the same people." Tr. 315.

Defendant's Exhibits PP & QQ. The interests of the two counties, however, are starkly different. Whereas Niobrara County taxpayers contribute more taxes to the State than the county receives back in revenues, the taxpayers of Goshen County are net beneficiaries of the State's distribution of tax revenues.[19] It is unlikely, therefore, that the citizens of Goshen County would be sympathetic to requests from the citizens of Niobrara to reallocate the distribution of State funds. In every real sense, therefore, the people of Niobrara County would be without representation in the State Legislature and without an advocate in the State Capital if the 63 plan were used. *Cf. Mahan v. Howell*, 410 U.S. at 324.[20]

The demonstrated importance of counties in Wyoming supports the Legislature's finding that "the interests of each county must be guaranteed a voice . . ." in the House of Representatives. J.A. 68.[21] This legitimate state goal is

19. For example, in Fiscal Year 1981, Niobrara County contributed $654,546 more in sales, cigarette and gasoline taxes to the State then it received in return; by contrast, Goshen County received $2,068,916 more than it contributed. J.A. Ex. G-4. Similarly, projections show that in Fiscal Year 1982 Niobrara County will contribute $583,992 more to the state in oil and gas and severance taxes than it receives, and Goshen County will receive $831,854 more than it sends to the State. The difference between the two counties will be exacerbated over succeeding years. *See* J.A. Ex. G-5 and G-6.

20. In addition to the interest in preserving county lines *per se*, the 64 plan enhances the ability of Niobrara residents to participate effectively in the electoral process. Last Term, this Court held that the ability of 6,300 black voters to participate in local elections was hampered by their residence in a rural Georgia county that is two-thirds the size of the State of Rhode Island. *Rogers v. Herman Lodge*, 102 S.Ct. 3272, 3274, 3280 (1982). Niobrara County is by itself larger than the States of Rhode Island or Delaware. J.A. Intervening Defendant's Exhibit QQ; The World Almanac, 458 (1981). The ability of the 2924 residents of Niobrara County to take part in electoral activities would surely be hampered by their being included with Goshen County to form a district with a combined square mileage almost as large as the State of Connecticut. *See* J.A. Intervening Defendant's Exhibits PP & QQ; The World Almanac, 458 (1981).

21. Appendix A to this brief collects Wyoming Statutes that illustrate the functional interrelationships between the state and county governments and thus provide further support for the Legislature's finding.

directly advanced by use of the 64 plan, which ensures that the voices of Niobrara citizens and the needs of Niobrara County will continue to receive attention in the House. As the District Court found, "the interests of the people of Niobrara County would be virtually unprotected" if the 64 plan were not used. 536 F. Supp. at 784; A. 26.

Recognition of the State's interests demonstrates that the decision to use the 64 plan to protect the citizens of Niobrara County passes scrutiny under the "rational basis" test. As this Court has emphasized, that standard merely requires that a state legislature "*could rationally have decided*" that a challenged means promotes a legitimate goal. *Minnesota v. Clover Leaf Creamery Co.*, 101 S.Ct. 715, 725 (1981) (emphasis in original). The District Court held that the 64 plan directly furthered the State's interest and appellants have proffered no reason to disturb that conclusion. The allocation of a representative to Niobrara County is constitutional.[22]

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22. Enactment of the 64 plan would also satisfy the holding of *Reynolds v. Sims*, 377 U.S. at 562, that apportionment plans that — unlike this plan — threaten majority control of a state legislative body must be "carefully and meticulously scrutinized." This Court has emphasized that courts are not "furnished any specialized calipers that enable them to extract from the general language of the Equal Protection Clause of the Fourteenth Amendment the mathematical formula that establishes what range of percentage deviations is permissible, and what is not." *Mahan v. Howell*, 410 U.S. at 329. Although some of the statistical measures of the 64 plan are less favorable than those in plans disapproved by this Court, those statistics are of little use in this case. *See* text at 20, *supra*. The key measurement — the ability of a majority to control the House — demonstrates that appellants are not significantly disadvantaged by use of the 64 plan in place of the 63 plan, *see* text at 18, *supra*, and that those differences that do exist are well justified by the State interests identified above. Accordingly, the 64 plan will pass constitutional muster under either standard of judicial review.

CONCLUSION

This case presents a narrow question: Whether the State of Wyoming may allocate one of sixty-four members of its House of Representatives to the people of Niobrara County in a manner that does not significantly affect appellants. The provision disputed herein — unlike the apportionment plans considered when *Reynolds v. Sims* was decided — does not threaten the interest of any appellant in maintaining majority control of the State Legislature. Absent an infringement of the fundamental interest in remaining free from vote dilution, this Court should not prevent the Wyoming Legislature from structuring its government in a manner best suited for the people and the particular governmental concerns of the State of Wyoming. Accordingly, the State requests this Court to affirm the judgment of the District Court.

Respectfully submitted this 7th day of January, 1983.

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APPENDIX A

Introduction to Statutory Appendix

Wyoming's Constitution and statutes have created and preserved a system of close working relationships among county governments, school districts and the Legislature. Selected provisions which illustrate these relationships are set out in Appendix A. In summary, these provisions demonstrate:

1. County governments provide basic public services including hospitals, W.S. 18-8-102; airports, W.S. 10-5-201; joint health services, W.S. 35-1-304; libraries, W.S. 18-7-102; and other services not detailed in the Appendix, including enforcement of state laws and land use planning.

2. County revenues are limited by Constitutional tax limitations, Art. 15 §5, and debt limitations, Art. 16, §§3 and 5. Local school taxes are also limited, Art. 16, §5; W.S. 21-13-101.

3. County governments levy taxes for local schools, Art. 15, §17; W.S. 21-13-201, and for the state school foundation program, Art. 15, §15; W.S. 21-13-303.

4. County and school district accounts are subject to state audits to ensure proper use of public funds, W.S. 9-2-410, 9-7-336, 21-13-103. Public works construction is governed by state resident preference laws, W.S. 9-8-301, 9-8-403.

5. The authority of county officials is created and limited by state law, Constitution, Art. 14, §3; W.S. 18-2-101, 18-3-504, 18-5-102.

6. Public land funds received by the state from the federal government are distributed to counties, W.S. 9-7-701, 9-7-801.

7. Federal mineral royalties are allocated to several accounts for the aid of schools, towns and counties, W.S. 9-7-901, 9-7-902. Guidelines and criteria for distribution of funds among the several county school districts are pro-

vided by statute, W.S. 21-13-305, *et seq.*, 21-15-101, *et seq.* These statutes have been repeatedly amended during recent years, Ch. 38, Ch. 159, Laws 1979; Ch. 13, Ch. 55, Ch. 56, Laws 1980; Ch. 44, Ch. 45, Ch. 46, Ch. 123, Ch. 150, Laws 1981; Ch. 38, Laws 1982.

8. State excise tax revenues are distributed to counties and other local governments by formulae established by legislation, W.S. 39-6-108, 39-6-210, 39-6-306, 39-6-411.

9. Counties may levy a sales tax, income from which is collected by the state and returned to county and town governments, W.S. 39-6-412, 39-6-512.

10. Sales tax revenue distribution among towns and counties can be altered to provide revenues to growing local governments, W.S. 39-6-512(d).

11. Wyoming's political parties are organized by county units, W.S. 22-4-101, *et seq.*

12. Wyoming's legislative districts utilize county boundaries, Constitution Art. 3, §3; Ch. 76, Laws 1981.

CONSTITUTION, STATUTES AND SESSION LAWS OF WYOMING

CONSTITUTION

ARTICLE 3.

§ 3. Legislative apportionment.

Each county shall constitute a senatorial and representative district; the senate and house of representatives shall be composed of members elected by the legal voters of the counties respectively, every two (2) years. They shall be apportioned among the said counties as nearly as may be according to the number of their inhabitants. Each county shall have at least one senator and one representative; but at no time shall the number of members of the house of representatives be less than twice nor greater than three times the number of members of the senate. The senate and house of representatives first elected in pursuance of this constitution shall consist of sixteen and thirty-three members respectively.

ARTICLE 7.

§ 8. Distribution of school funds.

Provision shall be made by general law for the equitable allocation of such income among all school districts in the state. But no appropriation shall be made from said fund to any district for the year in which a school has not been maintained for at least three (3) months; nor shall any portion of any public school fund ever be used to support or assist any private school, or any school, academy, seminary, college or other institution of learning controlled by any church or sectarian organization or religious denomination whatsoever. (As amended by Laws 1978, House Joint Resolution No. 2, p. 429.)

ARTICLE 14.

§ 3. Legislature to designate county offices and fix salaries of county officers.

The legislature shall by law designate county offices and shall, from time to time, fix the salaries of county officers, which shall in all cases be in proportion to the value of the services rendered and the duties performed.

ARTICLE 15.

§ 5. County levies limited.

For county revenue, there shall be levied annually a tax not to exceed twelve mills on the dollar for all purposes including general school tax, exclusive of state revenue, except for the payment of its public debt and the interest thereon.

§ 15. State tax for support of public schools.

For the support of the public schools in the state there may be levied each year a state tax not exceeding six mills on the dollar of the assessed valuation of the property in the state.

§ 17. County levy for support and maintenance of public schools.

There shall be levied each year in each county of the state a tax of twelve mills on the dollar of the assessed valuation of the property in each county for the support and maintenance of the public schools. This tax shall be collected by the county treasurer and disbursed among the school districts within the county as the legislature shall provide.

ARTICLE 16.

§ 3. Limitation on county debt.

No county in the State of Wyoming shall in any manner create any indebtedness, exceeding two per centum on the

assessed value of taxable property in such county, as shown by the last general assessment, preceding; provided, however, that any county, city, town, village or other subdivision thereof in the State of Wyoming, may bond its public debt existing at the time of the adoption of this constitution, in any sum not exceeding four per centum on the assessed value of the taxable property in such county, city, town, village or other sub-division, as shown by the last general assessment for taxation.

§ 5. Limitation on municipal, county or school district debt.

No city or town shall in any manner create any indebtedness exceeding four per cent (4%) of the assessed value of the taxable property therein, except that an additional indebtedness of four per cent (4%) of the assessed value of the taxable property therein may be created for sewage disposal systems. Indebtedness created for supplying water to cities or towns is excepted from the limitation herein.

No county shall in any manner create any indebtedness exceeding two per cent (2%) of the taxable property therein.

No school district shall in any manner create any indebtedness exceeding ten per cent (10%) on the assessed value of the taxable property therein for the purpose of acquiring land, erection, enlarging and equipping of school buildings.

All limitations herein shall refer to the last preceding general assessment.

WYOMING STATUTES, ANNOTATED
Republished Edition, 1977

TITLE 9. ADMINISTRATION OF THE GOVERNMENT.

§ 9-2-410. Examination of books of state institutions and agencies.

(a) The state examiner shall:

(i) Supervise the books, financial accounts and financial records of all state agencies and institutions, counties, school districts and municipalities within the state;

(ii) Visit each state institution or agency without previous notice to the officers thereof at least once each year;

(iii) Make an examination of the books and accounts of state institutions, state agencies, districts and entities described in W.S. 9-7-320(f) not receiving loans or grants from the state farm loan board and incorporated cities and towns under four thousand (4,000) inhabitants, including a thorough inspection of all detailed items and all receipts and expenditures of each such institution, agency, district, entity and city or town;

(iv) Expose faults or erroneous systems of accounting and when necessary instruct county and municipal officers in the proper mode of keeping accounts.

(b) When an annual audit has been performed and an audit report rendered by an independent certified public accountant on a state institution, state agency, district or entity described in W.S. 9-7-320(f) not receiving loans or grants from the state farm loan board or incorporated city or town under four thousand (4,000) inhabitants, the state examiner may accept such audit and audit report in lieu of a state examiner's annual examination of the books and accounts of such state institution, state agency, district, entity or incorporated city or town under four thousand (4,000) inhabitants.

(c) Examinations performed on agencies required to be audited by the revenue sharing division of the U.S. Treasury shall be performed in accordance with the audit guides and standards of revenue sharing recipients within the standards for audit of governmental units as promulgated by the American Institute of Certified Public Accountants.

§ 9-7-336. State authority.

The state examiner, with advice from municipal or hospital officials and certified public accountants, shall formulate, prescribe and publish a chart of accounts which shall be uniform but not necessarily identical by December 31, 1980 for every county and incorported city and town and a hospital oriented chart of accounts for county memorial and special district hospitals.

§ 9-7-701. Distribution of funds.

(a) All funds received by the state of Wyoming, as its distributive share of the amounts collected by the United States government under the provisions of the act of congress of June 28, 1934 (48 Stat. 1269), known as the Taylor Grazing Act, and any act amendatory thereof, shall be deposited with the state treasurer. Upon receipt the state treasurer shall distribute the money to the several counties of the state in which the public lands are located. The state treasurer shall ascertain from the proper United States officers having the records of receipt from leased or sold public lands the amount of receipts from such sources in this state for each year for which money is received by the state, and a separate account shall be kept of the sum received from sale or lease rentals from public lands, which sum shall be segregated by the state treasurer and paid to the county in which the leased or sold public land is located. If any leased or sold land lies in more than one (1) county of the state, each such county shall receive such proportional amount of the revenue as the area of the leased or sold public land included within the boundary of the county bears to the total area of the leased or sold public land.

§ 9-7-801. Apportionment of moneys.

On the first day of January of each year, or as soon thereafter as there shall be any money in the state treasury paid to the state by act of congress, approved June 30, 1906,

as amended by act of congress, approved May 23, 1908, or any act amendatory thereto or supplemental thereof, whereby twenty-five percent (25%), or any other proportion, of the money received from each forest reserve in the state is paid to the state to be expended for the benefit of the public schools and public roads of the county or counties in which the forest reserve is situated, the state treasurer shall apportion the money to the several counties of the state entitled thereto in the manner hereinafter described.

§ 9-7-901. Distribution and use of federal government royalties.

(a) All monies received by the state of Wyoming from the secretary of the treasury of the United States under the provisions of the act of congress of February 25, 1920 (41 Stat. 437, 450; 30 U.S.C. §§ 181, 191), as amended, except as provided by subsection (b) of this section, shall be deposited in the trust and agency fund and shall be distributed by the state treasurer as follows:

(i) Repealed by Laws 1979, ch. 160, § 3.

(ii) Two and one-quarter percent (2¼%) to the highway fund to be expended by the state highway commission for permanent construction or maintenance work in the counties to which the royalties are attributable with priority given to roads and highways impacted by mineral development;

(iii) Thirty-seven and one-half percent (37½%) to the public school foundation program account;

(iv) Twenty-six and one-quarter percent (26¼%) to the highway fund;

(v) Six and three-quarters percent (6¾%) shall be deposited in the trust and agency fund for the University of Wyoming. This revenue may be used only when authorized by the legislature for the actual and necessary expenses of constructing, equipping and furnishing of new buildings, the repairing of existing buildings, the purchasing of improved or unimproved

real estate, the payment of principal and interest on securities issued to finance these projects or for the payment of principal and interest on securities issued to refund the securities. Any proposed expenditures from this revenue shall be included in the budget of the university submitted to the governor. Payments from this revenue shall be made by the state treasurer only upon properly itemized and receipted vouchers approved by the trustees of the university and filed with the state auditor as provided by law. Notwithstanding the requirement that proposed expenditures from this revenue be included in the university budget submitted to the governor, the trustees of the university are authorized to approve expenditures from this revenue for the payment of principal and interest on any outstanding securities issued pursuant to this paragraph in accordance with the terms of the securities;

(vi) Seven and one-half percent (7½%) shall be distributed to incorporated cities and towns to be used for planning, construction or maintenance of public facilities or providing public services. Any city or town may expend these revenues or pledge future revenues for payment of revenue bonds issued to provide public facilities. However no city or town shall pledge future revenues to the federal government under 43 U.S.C. § 1747 unless the city or town obtains a written determination from the governor, which he may make in connection with his consultation with the secretary of the interior under 43 U.S.C. § 1747 or otherwise, that the pledge will not affect the distribution of mineral royalties provided in this section. The distribution provided under this paragraph to any city or town shall be reduced by an amount equal to the amount of federal mineral royalties withheld from the state by the federal government to repay any loan to the city or town under 43 U.S.C. § 1747. Pledges of this income for revenue

bonds shall not exceed ten (10) years. Each city and town shall receive:

(vii) Nine and three-quarters percent (9¾%) shall be deposited in the capital construction account together with the revenue provided by paragraph (b)(i) of this section to be expended as provided by W.S. 9-7-904;

(viii) Ten percent (10%) shall be deposited in the capital construction account to be expended as provided by W.S. 9-7-903.

(ix) and (x) Repealed by Laws 1979, ch. 159, § 3.

(b) The state treasurer shall ascertain and withhold all bonus payments received from the federal government attributable to coal, oil shale or geothermal leases of federal land within Wyoming and shall distribute it as follows:

(i) Fifty percent (50%) shall be deposited into the capital construction account for the purposes specified in W.S. 9-7-904;

(ii) Fifty percent (50%) shall be deposited into the legislative government royalty impact assistance account in the earmarked revenue fund. The legislature may appropriate these funds to alleviate impact problems resulting from mineral development.

§ 9-7-902. Government royalties construction revenues; educational purposes.

(a) Revenues received under W.S. 9-7-901(a)(viii) shall be credited to a capital construction account. The revenues shall be used to finance state revenue bonds as provided by this section.

(b) The farm loan board shall borrow money in a principal amount not to exceed one hundred million dollars ($100,000,000.00) by the issuance from time to time of one (1) or more series of revenue bonds. The board may encumber revenues under W.S. 9-7-901(a)(viii). Any bonds issued under this section, together with any interest accruing thereon and any prior redemption premiums due in connection therewith, are payable and collectible solely out of

revenues authorized under subsection (a) of this section. The bond holders may not look to any general or other fund for payment of the bonds except the revenues pledged therefor. The bonds shall not constitute an indebtedness or a debt within the meaning of any constitutional or statutory provision or limitation. The bonds shall not be considered or held to be general obligations of the state but shall constitute its special obligations and the board shall not pledge the state's full faith and credit for payment of the bonds.

(c) Except as otherwise provided bonds issued under this section shall be in a form, issued in a manner, at, above or below par at a discount not exceeding ten percent (10%) of the principal amount of the bonds, at public or private sale, and at a price which will result in a net interest rate to the state of not more than twelve percent (12%) per annum computed to maturity according to standard tables of bond values, including as a part of the rate the amount of any discount permitted by the board on the sale of the bonds and issued with recitals, terms, covenants, conditions and other provisions not contrary to other applicable statutes, as may be provided by the board in a resolution authorizing their issuance and in an indenture or other appropriate proceedings.

(d) Any bonds issued under this section shall:

(i) Be of denominations of five thousand dollars ($5,000.00) or multiples thereof;

(ii) Be fully negotiable within the meaning of and for all purposes of the Uniform Commercial Code, W.S. 34-21-101 through 34-21-1002;

(iii) Mature at such time or serially at such times in regular numerical order at annual or other designated intervals in amounts designated and fixed by the board, but not exceeding thirty (30) years from their date;

(iv) Bear interest payable annually, semiannually or at other designated intervals, but the first interest payment date may be for interest accruing for any period not exceeding one (1) year;

(v) Be made payable in lawful money of the United States at the office of the state treasurer or any commercial bank or commercial banks;

(vi) Be printed at such place as the board may determine;

(vii) Be additionally secured by a reserve fund created from revenues received under W.S. 9-7-901 (a)(viii) or from the proceeds of the bonds, or both, in such amount as determined by the farm loan board but not to exceed an amount equal to ten percent (10%) of the revenue bonds outstanding.

(e) Before any contract is entered into by the farm loan board to retain the services of a financial advisor or to sell the bonds to an underwriter, whether by competitive or negotiated bid, a full disclosure of the terms of the contract including fees to be paid shall be submitted to the management council through the legislative service office.

(f) Proceeds of state revenue bonds shall be credited to an account within the earmarked revenue fund and may be loaned or granted to school districts and community colleges or expended for state capital construction projects as hereafter provided. In determining which school districts and community colleges receive loans or grants hereunder, and in determining which state projects are funded, the farm loan board shall give priority to projects in subdivisions of the state socially or economically impacted directly or indirectly by the development of minerals leased under chapter 3A, title 30, U.S.C. [30 U.S.C. § 181 et seq.]. Pending distribution the state treasurer shall invest bond proceeds in such manner as will comply with all requirements of the Internal Revenue Service to insure the bonds will remain tax free investments.

(g) Not to exceed forty million dollars ($40,000,000.00) of the total proceeds of all bonds issued under subsection (b) of this section may be granted or advanced to school districts. As used in this subsection "school districts" includes boards of cooperative educational services under

W.S. 21-20-101 through 21-20-109. Of this amount up to twenty-five million dollars ($25,000,000.00) of bond proceeds or sixty percent (60%) of royalties under subsection (k) of this section may be advanced to school districts under W.S. 21-15-104. Repayments of advanced entitlements shall be credited to a capital reserve account within the earmarked revenue fund which may only be expended upon legislative appropriation. Up to fifteen million dollars ($15,000,000.00) of bond proceeds or forty percent (40%) of royalties under subsection (k) of this section may be disbursed to school districts as grants by the farm loan board following the recommendations of the state superintendent of public instruction. Grants shall only be made to school districts which the superintendent of public instruction finds have a critical need for school facilities, cannot raise sufficient funds and which are using or will use construction entitlements to finance the project unless the construction entitlements are legally committed to another project. The criteria for determining the eligibility of a school district for receiving a grant are:

(i) The present school population exceeds the capacity of available school buildings;

(ii) School district population projections indicate that an increase in the school population will continue;

(iii) Repealed by Laws 1980, ch. 56, § 2.

(iv) The bonded indebtedness, or the indebtedness authorized by the electors of the district, shall have reached the ninety-five percent (95%) or more of the constitutional debt limit.

(h) Not to exceed thirty million dollars ($30,000,000.00) of the total proceeds of all bonds issued under subsection (b) of this section may be expended for community college capital construction under the provisions of W.S. 39-6-306 (b)(iv).

(j) Not to exceed thirty million dollars ($30,000,000.00) of the total proceeds of all bonds issued under subsection (b) of this section may be expended for state capital con-

struction projects upon appropriation by the legislature after reviewing priorities submitted by the capitol building commission.

(k) All revenues received under W.S. 9-7-901(a)(viii) prior to the issuance of bonds under subsection (b) of this section and all revenues in excess of those required to be otherwise expended or retained pursuant to the resolution or resolutions authorizing the issuance of bonds under subsection (b) of this section may be used by the board to make grants or advances of entitlements under subsections (g) or (h) of this section in the same manner as the proceeds of the bonds are to be used, four-sevenths (4/7) under subsection (g) of this section and three-sevenths (3/7) under subsection (h) of this section.

(m) The provisions of paragraphs (g)(i) through (iv) of this section do not apply to boards of cooperative educational services. Criteria for determining loan or grant eligibility for boards of cooperative educational services shall be established by the farm loan board.

§ 9-8-301. Definition of "resident."

As used in this act [§§ 9-8-301 to 9-8-304, 9-8-308] the word "resident" means any person who shall have been a bona fide resident of the state for one (1) year or more immediately prior to bidding upon the contract; a partnership or association, each member of which shall have been a bona fide resident of the state for one (1) year or more immediately prior to bidding upon the contract; a corporation which has been organized under the laws of the state of Wyoming and has been in existence therein for one (1) year or more immediately prior to bidding upon the contract and which has its principal office and place of business within the state of Wyoming.

§ 9-8-403. Only Wyoming laborers to be employed on public works projects; exception; list of resident laborers.

Every person who is charged with the duty of construc-

tion, reconstructing, improving, enlarging, altering or repairing any public works project or improvement for the state of Wyoming or any political subdivision, municipal corporation, or other governmental unit thereof, shall employ only Wyoming laborers on such project or improvement, and every contract let by any such person shall contain a provision requiring that such labor be used, provided that other laborers may be used when Wyoming laborers, as defined in this act [§§ 9-8-401 to 9-8-406], are not available for such employment from within the state, or are not qualified to perform the work involved. It shall be the duty of the state employment office nearest the proposed contract or construction site to maintain a list of laborers, classified by skills, who are residents and are available for employment; further said office, when unable to provide the requested number of laborers from its own list, shall immediately contact other state employment offices and request the names of other available laborers. Every person required hereunder to employ Wyoming laborers shall inform said state employment office of his employment needs. If the said state employment office certifies that such person's need for laborers cannot be filled from those listed as of the date the information is filed, then the person may employ other than Wyoming laborers.

TITLE 10. AERONAUTICS.

§ 10-5-201. Authority of county commissioners to levy taxes, issue bonds, etc.; funds to be paid into "airport fund"; expenditure generally.

For the purposes of W.S. 10-5-101 through 10-5-204, the board of county commissioners may levy taxes, issue bonds or incur indebtedness as authorized by law for other county purposes. The board of county commissioners by resolution may also issue revenue bonds, notes, warrants and other revenue securities in the manner provided by W.S.

35-2-424 through 35-2-435, as from time to time amended, for trustees of hospital districts for the purposes of W.S. 10-5-101 through 10-5-204. All taxes collected, together with other monies received from the sale of bonds, cities or towns, rents and revenue, donations, federal grants and aid or other sources for this purpose, shall be placed in an airport fund which shall be expended only by the authority provided by law.

TITLE 18. COUNTIES.

§ 18-2-101. General powers.

(a) Each organized county in the state is a body corporate and politic. The powers of the county shall be exercised by a board of county commissioners which may:

(i) Sue and be sued;

(ii) Purchase property for the use of the county and acquire real property at tax sales, as provided by law;

(iii) Sell or convey property owned by the county, when it is in the best interests of the county;

(iv) Make contracts and perform other acts relating to the property and concerns of the county in the exercise of its corporate or administrative powers;

(v) Exercise other powers as provided by law.

§ 18-3-504. Powers generally.

(a) Each board of county commissioners may:

(i) Make such orders concerning the property of the county as they deem expedient;

(ii) Examine and settle all accounts of receipts and expenses of the county and examine, settle and allow all accounts against the county and issue county orders therefor as provided by law;

(iii) Provide for the construction and maintenance of county buildings and insure them in the name of the county treasurer for the benefit of the county. If there

are no county buildings they may provide suitable rooms for county purposes;

(iv) Apportion and order the levying of taxes as provided by law;

(v) Represent the county, care for the county property and manage the business and concerns of the county in all cases where no provision is made by law;

(vi) Lay out, alter or discontinue any road running through the county and for such purpose acquire the use of lands therein either by gift, prescription, dedication, the exercise of the right of eminent domain, purchase or lease and perform such other duties respecting roads as required by law;

(vii) Grant licenses for keeping ferries, toll bridges and toll gates as prescribed by law;

(viii) Perform such other duties as prescribed by law.

(b) Each board of county commissioners may provide snow removal services on any roads within the county designated as school bus routes by the board of trustees of any school district in the county.

§ 18-5-102. Powers of county commissioners.

Each board of county commissioners may provide for the physical development of the unincorporated territory within the county by zoning all or any part of the unincorporated territory.

§ 18-7-102. Manner of levying and collecting tax; library fund.

The county library tax shall be levied and collected as other county taxes and the money collected shall be set apart as the county library fund. Nothing herein shall be construed to authorize any levy in excess of those authorized by law.

§ 18-8-102. Prerequisites to appointment of board of trustees; indebtedness authorized for construction; annual tax levy for maintenance.

(a) When the board of county commissioners has received

sufficient guaranties that not less than fifteen thousand dollars ($15,000.00) is available for constructing, acquiring or equipping a county hospital, wing or portion of a building suitable for operation of a county hospital so arranged as to be capable of future enlargement, or where a county has acquired a hospital valued at not less than twenty-five thousand dollars ($25,000.00), it shall appoint a nonpartisan board of trustees of the hospital, none of which shall be a medical doctor, a practitioner of the healing art or a county commissioner.

(b) A county indebtedness may be created and county bonds authorized and issued for the construction, acquisition and equipment of the hospital in the manner then provided by law for the creation of indebtedness and the issuance of bonds for the construction of a courthouse and jail. When the hospital has been constructed or acquired and equipped the board of county commissioners shall annually levy a sufficient tax on all the taxable property in the county to provide for the maintenance of the hospital or wing or portion thereof. The tax shall be levied and collected as other county taxes and the amount collected shall be set apart as the county memorial hospital fund. No money shall be expended from the fund without the approval of the board of county commissioners.

TITLE 21. EDUCATION.

§ 21-13-101. Maximum rate of school district tax.

(a) Except as otherwise provided by law, the maximum rate of school district tax that may be levied for all school purposes, exclusive of bond interest and redemption, for any school district in any school year on each dollar of assessed valuation within the school district is as follows:

(i) In a unified school district, twenty-eight (28) mills for combined elementary and high school purposes, three (3) mills of which shall not be levied except with

the approval of a majority of the voters voting on the proposition;

(ii) Any school district involved in or affected by a district reorganization plan which is contested and not finally determined may levy taxes for the support of its public schools in the same manner and amount as authorized by law for a unified school district. The provision of this subsection terminates July 1, 1979.

§ 21-13-102. Cancellation of unpaid warrants; remedy of holders.

The treasurer of each school district shall on the first Monday in April of each year cancel all unpaid warrants of such school district which have been issued for a period exceeding twelve (12) months, and shall at the same time certify to the board of trustees of such school district the number and amount of each warrant which he has canceled. Such list of canceled warrants shall be entered in the minutes of the board and published at least once in a regular issue of a newspaper published in the county, during the month in which such warrants were canceled. Any person or persons holding a school district warrant which has been canceled under the provisions of this section, may present such warrant to the board of trustees of such school district at any subsequent time, not later than five (5) years after the date such warrant was canceled. The said board of trustees shall issue to the holder of such school district warrant, a new warrant covering the amount due on the original warrant at the time so canceled.

§ 21-13-103. Audit of books and accounts of school district.

The board of trustees of each school district may provide for an audit of the books and accounts of the district by a private auditor. The board shall file a report of each audit with the county clerk, the state department of education, and the state examiner.

§ 21-13-201. Levy, collection and distribution of 12 mill school tax.

(a) Pursuant to article XV, section 17 of the constitution of the state of Wyoming, there shall be levied each year, by the county commissioners in each county in the state, a tax of twelve (12) mills on the dollar of assessed valuation of the property within the county for the support and maintenance of the public schools. This tax shall be collected by the county treasurer.

(b) On or before September 1 of each year, the state department of education shall notify the treasurer of each county of the percentage proportion to be allocated from the countywide twelve (12) mill school levy to each school district in his respective county. The computation of the distribution of the countywide twelve (12) mill levy shall be made by the department of education on the basis of the number of classroom units for the previous year, as that number is computed in W.S. 21.1-231 [§ 21-13-308]. This number, for each district, is to be converted into a percentage of the total number of classroom units for all school districts within the county. The county treasurer shall distribute the revenue arising from the countywide twelve (12) mill levy among the school districts of the county according to the percentage computed above, and pursuant to W.S. 21.1-223 [§ 21-13-207].

§ 21-13-206. Disposition of fines, penalties and forfeitures.

All fines, penalties, and forfeitures provided by the school laws may be recovered by an action by any citizen in the name of the people of the state of Wyoming for the use of the proper school district or county, and when they accrue, shall belong to the school district or county in which they have accrued and shall be deposited with the county treasurer.

§ 21-13-207. Apportionment of funds by county treasurer.

On the second Monday of December and the second Monday in June of each year, and on the second Monday of any month when requested by the treasurer of a school district, the county treasurer shall apportion all monies in the county treasury belonging to the county school fund, including fines and forfeitures, among the various school districts of the county in the same percentages as provided by W.S. 21-13-201(b) and shall immediately pay such amount to each school district, taking receipt therefor.

§ 21-13-301. Distribution to counties of money in common school account for use of public schools.

On or before March 31 and September 30 in every year, if there is any money to the credit of the common school account within the permanent land income fund for the use of the public schools in the state treasury, the state superintendent shall distribute the income in the account pro rata among the several counties of the state according to the number of children of school age in each as determined by the average daily membership of the school districts within each county for the preceding school year. The state superintendent shall certify to the state auditor the amount each county is entitled to and the account out of which it is to be paid. The auditor shall then draw warrants on the state treasurer payable to the treasurer of each county for the amount so certified.

§ 21-13-302. Distribution of money to school districts by county treasurer.

The county treasurer shall cause the money distributed to the county under W.S. 21-13-301 to be distributed among the several school districts in the county pro rata according to the number of children of school age in each school district as shown by the average daily membership in each district for the preceding school year. The state superinten-

dent shall make all information necessary to the distribution available to each county treasurer. No distribution shall be made under this section to any school district for a year in which no school has been actually maintained within the boundaries of the school district during the previous year.

§ 21-13-303. Levy of state tax; proceeds to be placed in trust and agency fund; reduction of mill levy.

(a) For the support of the public elementary and secondary schools of the state, there shall be assessed and levied each year a state tax of six (6) mills on the dollar of the assessed valuation of the property within the state, except as provided in subsection (c) of this section, said tax to be in addition to any and all other taxes authorized by law.

(b) The funds that may accrue under this section shall be placed in an account within the trust and agency fund. Balances in the account, if any, shall not lapse or be transferred to any other fund or account.

(c) Between July 1 and July 10 of each year the state auditor and the state treasurer shall determine if the unobligated average daily general fund balance over the preceding fiscal year exceeds twenty percent (20%) of the amount of the general fund appropriations for the present biennium. If the unobligated average daily general fund balance exceeds twenty percent (20%) of the amount appropriated, the excess is appropriated and shall be transferred into the foundation program account as soon as possible. The auditor and treasurer shall immediately notify the state board of equalization of the amount to be transferred. Based on the current assessed valuation of the state, the board shall compute the estimated amount of revenue to be produced by a six (6) mill levy, subtract the amount transferred to the foundation program account, and then compute the mill levy necessary to produce the difference. The board shall then certify the recomputed mill levy to the county assessors to be levied and collected in lieu of the six (6) mill state levy for the next tax year.

§ 21-13-304. State treasurer to keep separate account in trust and agency fund.

The state treasurer shall keep a separate account within the trust and agency fund and except as otherwise provided by law all monies appropriated for school purposes shall be kept in such account.

§ 21-13-305. Definitions.

(a) For the purposes of this article [§§ 21-13-301 to 21-13-313]:

(i) "Average daily membership" means the aggregate number of pupils present plus the aggregate number of pupils absent, divided by the actual number of days the school is in session for the year. Pupils who have withdrawn from school or who have been absent for more than ten (10) consecutive calendar days shall not be counted as members;

(ii) "Classroom unit" means the unit for measuring minimum educational needs for foundation program purposes;

(iii) "District" means any school district as defined by law;

(iv) "Elementary school" means a school with two (2) or more teachers consisting of grades one (1) through eight (8), or any appropriate combination of grades within this range, as determined by the plan of organization for schools authorized by the district board of trustees;

(v) "Secondary school" means a school consisting of grades nine (9) through twelve (12), or any appropriate combination of grades within this range as determined by the plan of organization by the district board. When grades seven (7) and eight (8) are included in an organized junior high school, they shall be considered for the purpose of this act [§§ 21-1-101 to 21-14-106] as though included in a separate elementary school;

(vi) "Kindergarten" means a class of pre-first-grade students authorized by the board and attending classes in half-day sessions;

(vii) "Foundation program" means the minimum level of educational services and facilities, as defined in this article, which is to be made available to each district from the required local effort and the public school foundation program account;

(viii) "Public school foundation account" and "foundation account" mean the account created by section 229 of this article [§ 21-13-306] for use in financing education in public one (1) teacher, elementary and secondary schools;

(ix) "Regulations of the state board" means those regulations which the state board may adopt upon the recommendation and with the advice of the state superintendent. The state superintendent shall recommend for adoption by the state board such rules and regulations as he deems necessary for carrying out the purposes of this article;

(x) "Teacher" means any member of the teaching or professional staff engaged in the service of the public one (1) teacher, elementary, and secondary schools for whom certification is required as a condition of employment;

(xi) "Vocational teacher" means such teacher of vocational subjects as is certified as such by the state department of education and shall be engaged in teaching vocational agriculture, home economics, commercial subjects, industrial arts, trades and industries, or distributive education classes, as defined or approved by the state department of education. Eligibility to participate in other state or federal reimbursement programs shall not be a criterion of definition. This definition shall not include teachers of adult or night classes;

(xii) "Year of college training" shall be the successful

completion of such a one (1) year course of study as shall be approved by the state department of education.

§ 21-13-306. Foundation program account established; disposition of monies.

(a) There is hereby established the public school foundation program account consisting of funds appropriated to, or designated to said account by law, or by gift from whatever source, for distribution to districts in accordance with the provisions of this article.

(b) The resources of the public school foundation account shall be paid into the state treasury, and shall be drawn out and distributed to the districts upon certification of the state superintendent and upon vouchers approved by the state auditor payable to the treasurer of the several districts.

§ 21-13-307. Eligibility to share in distribution of money from account.

(a) Each district which meets the following requirements shall be eligible to share in the distribution of funds from the foundation account:

(i) Employed and compensated teachers for not less than nine (9) school months during the previous year and has actually employed and is compensating at least one (1) teacher for the current year. Provided that a newly organized district need not have employed any teachers during the previous year in order to qualify for its first year of operation;

(ii) Operated all schools for a term of one hundred eighty (180) days or more during the previous school year; provided, that if the school term of any school in a district was less than one hundred eighty (180) days, the amount allotted per classroom unit under section 21.1-232 of the statutes [§ 21-13-309] for such school shall be in proportion to the length of the term the school actually operated, unless caused by closures

of schools due to fuel shortages, fire, construction problems, weather, civil disturbance or threatened civil disturbance, days of national recognition, wide-spread illnesses, or whenever necessary to protect the health, safety or welfare of students, teachers and other employees, provided such closures are approved by the state board of education or are the result of presidential or gubernatorial executive orders;

(iii) Furnishes to the state superintendent such statistical data and information as he shall reasonably require to compute a district's entitlement to share in the foundation account and the extent of such entitlement.

§ 21-13-308. Allotment of classroom units for purpose of determining amount to be included in foundation program for each district.

(a) In determining the amount to be included in the foundation program for each district, the state superintendent shall first allot to each district, classroom units for one (1) teacher, elementary and secondary schools, classroom units for vocational education and classroom units for kindergartens and special rooms.

(b) Elementary schools shall be allotted classroom units based on average daily membership in accordance with the following table:

Number of Average Daily Membership	Divisor	Minimum Units
Less than 25	10	1.00
25 to 44	15	2.40
Number of Average Daily Membership	Divisor	Minimum Units
Less than 25		
45 to 89	18	2.93
90 to 139	20	4.94
140 to 199	23	6.95
200 and over	25	8.65

(c) Secondary schools shall be allotted classroom units based on average daily membership, in accordance with the following table:

Number of Average Daily Membership	Divisor	Minimum Units
Less than 25	10	1.0
25 to 59	12	2.4
60 to 109	15	4.91
110 to 169	18	7.27
170 to 239	21	9.39
240 to 299	23	11.38
300 and over	25	13.00

(d) Allotments of classroom units in accordance with subsections (b) and (c) of this section shall be made on the average daily membership for the preceding school year provided that:

(i) If the average daily membership in any school for the first sixty (60) school days of the current school year is as much as one hundred (100) ADM or ten percent (10%) greater than the average daily membership of such school for the first sixty (60) school days of the preceding school year, upon application of the district board of trustees made to the state board, the total number of classroom units may be recalculated to determine the current entitlement; or

(ii) If by February 1 of the current school year, the enrollment in any school increases by fifteen percent (15%) or more as determined by comparing actual number of pupils in membership to the average daily membership of such school for the first sixty (60) school days of the preceding school year upon application of the district board of trustees made to the state board, the total number of classroom units may be recalculated to determine the current entitlement; or

(iii) If the average daily membership in any school

for the first sixty (60) days of the current school year is more than one hundred (100) ADM or ten percent (10%) less than the average daily membership for the first sixty (60) days of the preceding school year, the state board may recalculate the current entitlement.

(e) In allotting classroom units for vocational education, one (1) classroom unit shall be allotted for each full-time vocational teacher teaching vocational subjects. A proportionate fraction of a classroom unit shall be allotted for each vocational teacher teaching less than full time. The state board shall determine standards for vocational education programs.

(f) In allotting classroom units for one (1) teacher schools, there shall be allotted one (1) full unit for each school.

(g) In allotting classroom units for kindergartens, there shall be allotted one-half classroom unit for each twenty-five (25) kindergarten students, or a proportional fraction thereof, in average daily membership in each school.

(h) In allotting classroom units for exceptional or handicapped children, there shall be allotted one (1) full unit, or proportional fraction thereof, for each ten (10) pupils identified as educable retarded, and for pupils also evaluated or diagnosed as having physical, psychological, or social disabilities which impair learning; and one (1) full unit, or proportional fraction thereof, for each eight (8) pupils identified as trainable retarded; provided a properly certificated teacher qualified to teach pupils having the disabilities included in this article [§§ 21-13-301 to 21-13-313] is employed in each allocated classroom unit, and such pupils are not otherwise included in any other classroom unit determination.

§ 21-13-309. Determination of amount to be included in foundation program for each district.

(a) The amount to be included in the foundation program of a district for general operation expense shall be determined by multiplying the number of classroom units allot-

ted to a district by thirty-seven thousand three hundred dollars ($37,300.00) for the fiscal year beginning July 1, 1981.

(b) The amount to be included in the foundation program of a district for transportation shall be seventy-five percent (75%) of the amount actually expended by the district during the previous school year for the operation and maintenance of transportation routes for the transportation of children to and from regular school sessions; plus one-sixth of the amount actually expended by the district during the previous four (4) years as transportation capital outlay for purchase of all school busses used only for the transportation of children to and from regular school sessions.

(c) The amount to be included in the foundation program of a district for tuition shall be the amount expended in the previous school year by the district for tuition of students who attended school in another district or state. However, a district which in the previous year did not operate a high school, or was not included in a special high school district which operated a high school, shall not include tuition expended for high school students, except in such amount as such tuition shall exceed five (5) mills on its valuation in the previous year.

(d) The amount to be included in the foundation program of a district for maintenance of isolated or homebound children shall be seventy-five percent (75%) of the amount expended in the previous school year by the district under section 65 of this code [§ 21-4-401], and under regulations which have been or may be established by the state board.

(e) The amount included in the foundation program of a district for education of children who have a mental, physical or psychological handicap or social maladjustment which impairs learning is the amount spent in the current fiscal year for educational diagnosis and evaluation of all such children, the amount spent in the current fiscal year for tuition and maintenance of such children who attend school in another district or state, and the amount spent

for such education within the district during the current school year, under regulations established by the state board. No reimbursement shall duplicate any other category. (Laws 1978, ch. 42, § 1; 1979, ch. 38, § 1; ch. 61, § 1; 1980, ch. 55, § 1; 1981, ch. 123, § 1.)

(f) The total amount of the foundation program for each district shall be the sum of the amounts included in subsections (a) through (e) above.

§ 21-13-310. Annual computation of local district resources.

(a) A district shall be required to make an annual computation of the sum of local district resources, including the following:

(i) The amount of revenue which will be received by each school district as its share of the countywide twelve (12) mill school levy, shall be based on computations made by the state department of education;

(ii) The required local tax effort in the current year for the assessment and levy of school taxes by the district according to the following schedule:

(A) A district actually and physically operating a school within the boundaries of the district and therein offering instruction in grades kindergarten or one (1) through twelve (12); ten (10) mills on every dollar of property within the district subject to taxation for school purposes;

(B) A nonunified district actually and physically operating a school within the boundaries of the district and therein offering instruction in grades one (1) through eight (8), six and two-thirds (6 2/3) mills on every dollar of property within the district subject to taxation for school purposes.

(iii) Repealed by Laws 1981, ch. 43, § 2.

(iv) The district's share of the common school account within the permanent land income fund which was distributed to it in the previous school year under

the provisions of sections 21.1-224 [§ 21-13-301] and 21.1-225 [§ 21-13-302] of the statutes;

(v) The district's share of fines and forfeitures distributed to it during the previous school year under the provisions of section 222 of this code [§ 21-13-206], and sections 33-7 [§ 33-1-109], 33-8 [§ 33-1-110], 7-439 [§ 7-16-131] and 7-440 [§ 7-16-132], Wyoming Statutes 1957;

(vi) The district's share of forest reserve funds distributed to it during the previous year under the provisions of section 9-576, Wyoming Statutes 1957 [§ 9-7-804];

(vii) The district's share of Taylor Grazing Act funds distributed to it during the previous school year under the provisions of section 9-750 [9-570], Wyoming Statutes 1957 [§ 9-7-702];

(viii) The district's share of the county motor vehicle fund distributed to it during the previous school year by the county treasurer under the provisions of section 31-49, Wyoming Statutes 1957 [§ 31-4-401];

(ix) Seventy-five percent (75%) of the amount of tuition paid to the district during the previous school year including such amounts as it may be required to charge under the provisions of section 67 of this code [§ 21-4-501]; provided, that no district shall include in its annual computation of the sum of local district resources any tuition paid to the district during the previous school year by another district for the education of pupils with any mental or physical handicap because of services available in the receiving district.

(b) On or before July 10th of each year the county treasurer of each county shall certify to the state superintendent, in such form as the state superintendent shall provide, a report of monies distributed by him to each district within the county during the previous school year. (Laws 1955, ch. 119, § 6; 1957, ch. 174, § 6; W.S. 1957, § 21-68; Laws 1959, ch. 184, § 1; 1965, ch. 189, § 1; 1967, ch. 109,

§§ 2 to 4; 1969, ch. 111, § 233; 1971, ch. 265, § 2; 1973, ch. 165, § 1; ch. 245, § 3.)

§ 21-13-311. Determination of amount to be distributed to each district from account; undistributed balance.

(a) The amount of money which shall be distributed to each district from the foundation account shall be determined by subtracting the sum of the local district resources computed in accordance with the terms of section 233 of this code [§ 21-13-310] from the total amount of the foundation program computed in accordance with the terms of section 232 of this code [§ 21-13-309].

(b) When it can be shown by any involved party that any factor used in computing the amount of money distributed to a district has changed ten percent (10%) or more from that value used in making such computation compensatory payment or deductions from payment shall be made as soon as practical, but no later than when the next regular payment is made to the district.

(c) So much of the foundation account which is not distributed in any year, for any reason, shall be held in the foundation account for distribution in subsequent years in accordance with this article [§§ 21-13-301 to 21-13-313], and amendments thereto.

§ 21-13-312. Prorating payments when income from account insufficient.

To preserve the integrity of the foundation account for the biennium, and so that payments can be made during the full school year for each year of the biennium, if and when it appears to the state superintendent that the income available to the foundation account shall not be sufficient to meet the payments as provided herein, the money available in the account shall be prorated among the classroom units at an amount less than one hundred percent (100%) of the amounts earned.

§ 21-13-313. Distribution of funds.

(a) For each school year the state auditor, on the certification of the state superintendent, shall draw warrants on the state treasurer for the amount of money which shall be distributed to each district from the foundation account, as computed under the provisions of section 234 of this article [§ 21-13-311]. Said warrants, payable to the treasurer of the district concerned, shall be delivered to the state superintendent for distribution to the proper officials of the several school districts.

(b) The state superintendent shall determine on or before July 25th of each year the tentative allotment of foundation funds to which each district is entitled under the provisions of this article [§§ 21-13-301 to 21-13-313].

(c) Beginning August 1 of each year, and on or about the first day of each month thereafter for not to exceed a total of seven (7) successive months, the funds available in the foundation account shall be distributed as rapidly as possible until each district has received an amount not to exceed fifty percent (50%) of its tentative allotment. On or before March 1 of each year, the state superintendent shall determine the exact amount of the foundation account to which each district is entitled and the remainder of the amount due each district for the current year shall be distributed in three (3) equal installments on March 15, April 15 and May 15.

§ 21-13-314. Supplemental entitlements to school districts.

(a) In addition to entitlements received under the public school foundation program, unified school districts whose assessed valuation per classroom unit is below the state average shall receive, as supplemental entitlement from the public school foundation program fund an amount determined by subtracting the assessed valuation per classroom unit of the school district from the average assessed valuation per classroom unit of the state and multiplying the dif-

ference in assessed valuation per classroom unit of the school district by fifteen (15) mills times the number of classroom units within the district for the fiscal year beginning July 1, 1978 and seventeen (17) mills for each fiscal year thereafter.

(b) The state superintendent of public instruction shall devise a formula to provide supplemental aid for nonunified school districts, proportional to that received by unified school districts, considering the difference in qualifying levies, and maximum permissible levies without a vote of the people.

(c) To be eligible for supplemental entitlement, a school district during the preceding fiscal year shall have levied not less than one (1) mill below the maximum tax allowed, without a vote of the people, under W.S. 21-13-101. (Laws 1978, ch. 42, § 1; 1981, ch. 46, § 1.)

(d) If there are insufficient funds in the school foundation program fund to meet the supplemental entitlement, supplemental entitlements to school districts shall be reduced proportionately and there shall be no reduction in the entitlement due from the public school foundation program.

§ 21-15-101. School district capital construction entitlements; computation.

(a) Each Wyoming school district may finance a capital construction project in whole or in part as provided by W.S. 21-15-101 through 21-15-104.

(b) Annually on or before September 30 the department of education shall compute an annual construction entitlement for each Wyoming school district as hereafter provided.

(c) To compute the annual entitlement of each Wyoming school district the department shall multiply the total classroom units in each Wyoming school district times four thousand dollars ($4,000.00) and subtract the product of four (4) mills times the current assessed value of the school

district for which the computation is made. The entitlement shall be reduced proportionately if the funds made available by W.S. 21-15-103 are insufficient. The entitlement shall annually be paid to each school district on or before January 1 except as provided by W.S. 21-15-104 (b).

§ 21-15-102. Use of capital construction entitlements.

(a) The annual capital construction entitlement distributed pursuant to W.S. 21-15-101 (c) shall be deposited in a separate account and may only be expended to finance a capital construction project for the school district upon majority vote of the school district trustees. The entitlement may not be encumbered except as provided by W.S. 21-15-104 unless legally encumbered before July 1, 1982. The entitlement may only be:

(i) Accumulated in an interest-bearing account earmarked for future construction needs in building and equipping school facilities;

(ii) Expended to retire an existing bond issue;

(iii) Expended to acquire and develop building sites;

(iv) Expended to repay advances as provided by W.S. 21-15-104;

(v) Expended for a continuing building project including renovation and repair of existing buildings or improvements which would conserve energy;

(vi) Expended as lease payments or rent for the use of facilities by the school district. This authority terminates on July 1, 1983 as to leases entered into after June 30, 1983. This section remains effective for leases entered into before July 1, 1983.

(vii) Expended as lease payments or rent for the use of facilities by the school district. This authority terminates on July 1, 1983 as to leases entered into after June 30, 1983. This section remains effective for leases entered into before July 1, 1983.

§ 21-15-103. Funding authority.

Commencing July 1, 1977, and annually thereafter the amount of revenue required for the distributions pursuant to W.S. 21-15-101 (c) is annually appropriated from any funds of the state which may be earmarked by the legislature for such purposes as may be supplemented by legislative appropriations from time to time for the payment of the entitlements to each school district or as provided by W.S. 21-15-104 (b).

§ 21-15-104. Capital construction; advances.

(a) A Wyoming school district receiving annual entitlements under W.S. 21-15-101 may apply for and receive advance entitlements as determined by the department of education under W.S. 21-15-101(c) as hereinafter provided from the permanent Wyoming mineral trust fund, revenues provided by W.S. 9-7-903 or any other funds authorized by the legislature including general fund appropriations. No advance from the permanent Wyoming mineral trust fund shall be in an amount which when added to the current indebtedness of the school district will exceed the debt limit of the school district. An advance from revenues other than the Wyoming permanent mineral trust fund does not constitute an indebtedness of the school district receiving the advance. The farm loan board with the recommendation of the state superintendent of public instruction shall approve the advance entitlements if it appears the project is essential to the district and the district is indebted or will be indebted within three (3) months to at least eighty-five percent (85%) of its debt capacity with outstanding bonds payable from general property tax levies of the school district and including any advances from the Wyoming permanent mineral trust fund. The amount of entitlement granted to any school district shall be determined as follows:

(i) Divide the most recent assessed valuation of the state by the most recent determination of classroom units in the state, subtract the most recent assessed

valuation of the district divided by the most recent determination of classroom units in the district and multiply the difference by ten percent (10%) and also by the most recent determination of classroom units in the district applying for the advance entitlements;

(ii) The district may receive not to exceed the sum so computed as advance entitlements.

(b) Before approving any advance entitlements the project shall have been approved by the qualified electors of the school district in the case of advance entitlements from any revenues other than the permanent mineral trust fund and the indebtedness shall have been approved by the qualified electors of the school district if the advance is from permanent Wyoming mineral trust funds. If the advance entitlements are approved the state treasurer shall disburse the money from the appropriate fund as necessary to pay costs of the project as they accrue. The farm loan board shall adopt rules and regulations to implement this section and to determine priorities based on need for construction loans or grants among eligible school districts based on:

(i) The assessment of the quality and quantity of student space in existing buildings used for instruction in each school district;

(ii) The determination of pupil space needs or the excess of pupil space available for the instructional purposes in each school building;

(iii) The projection and probability of changes in student populations within each school district for an ensuing ten (10) year period.

(c) The farm loan board shall publish the criteria to be used in determining the eligibility for state assistance on school construction projects and the procedures to be followed during the review process.

(d) Except as authorized by the farm loan board, if an advance of monies is made to a school district from any source other than the permanent mineral trust fund, future entitlements of the district pursuant to W.S. 21-15-101(c)

shall be paid into the earmarked revenue fund as provided by W.S. 9-7-903(g), or if advances were made from the permanent mineral trust fund, into the permanent Wyoming mineral trust fund, as the case may be, until the advance is repaid. The farm loan board may authorize a percent less than one hundred percent (100%) of each year's entitlement to be paid into the earmarked revenue fund or permanent mineral trust fund for outstanding and future advance entitlements so long as the percent authorized to be paid is projected to recapture the advance entitlement plus interest, if any, within seven (7) years from the date the advance entitlement was granted. The unpaid balance of each advance from revenues under W.S. 9-7-903 and any source other than the permanent mineral trust fund shall not bear interest and a school district receiving an advanced entitlement from revenues under W.S. 9-7-903 or any revenues other than the permanent mineral trust fund has no obligation to repay the advance except as provided by this subsection. The unpaid balance of each advance from the permanent Wyoming mineral trust fund shall bear interest at six percent (6%) per annum.

TITLE 22. ELECTIONS.

§ 22-4-101. Composition, election and qualifications of county central committees.

The county central committee of each political party consists of precinct committeemen and committeewomen elected in the county at the regular biennial primary election. Each political party in each precinct shall elect one committeeman and one committeewoman for each two hundred fifty (250) votes or major fraction thereof cast for the party's candidate for representative in congress in the last general election, but provided that no precinct shall be entitled to less than one (1) precinct committeeman and precinct committeewoman. Precinct committeemen and

committeewomen shall be electors registered in the party and resident in the precinct. If a precinct boundary line is changed for any reason, the county commissioners shall determine the number of precinct committeemen and committeewomen to which the affected precinct is entitled.

§ 22-4-104. County central committee organizational meeting; notice of meetings.

The county central committee shall meet and organize under the direction of the county chairman at the time and place determined by the county chairman within ten (10) days after its members have been certified elected. The county chairman shall also publish a notice of all meetings of the county central committee in a newspaper of general county circulation not less than two (2) days prior to a meeting.

§ 22-4-106. County convention.

The county convention of each political party shall meet during the first fifteen (15) days of March.

§ 22-4-108. Delegates and alternates to state convention; county platform.

The county convention shall elect from electors resident in the county and registered in the party delegates and alternates to the state convention as apportioned by the rules of the party. The county convention may also adopt a county platform.

§ 22-4-117. State convention members.

Members of the state convention are the delegates or their alternates chosen by the county conventions, and the delegates or their alternates chosen at large by the young Republican or young Democratic organizations in accordance with rules of their respective party.

§ 22-4-118. State convention powers and duties.

(a) The state convention has the following powers and duties:

(i) To nominate electors of president and vice-president of the United States;

(ii) To elect national committeemen and committeewomen;

(iii) To adopt a platform;

(iv) To select delegates and alternates to national nominating conventions;

(v) To formulate or change the rules governing the internal organizations of the party which rules must include:

(A) The time, place, manner of election and terms of office of party officers not provided by statute;

(B) The method of apportioning delegates and alternates to the state convention to each county;

(C) The method of selecting delegates and alternates to the national convention;

(D) The name, powers and duties of any standing committee of the state central committee and the state convention;

(E) Rules of conduct for county and state conventions;

(F) Powers and duties delegated to county and state committees.

(vi) To conduct such other business as it deems necessary or proper.

§ 22-5-401. Procedure generally.

(a) The vacancy in nomination which occurs if a candidate, between primary and general elections, dies, is disqualified to hold the office for which nominated, fails to accept the nomination where required by law, or files a withdrawal or rejection of nomination with the officer respon-

sible for printing ballots and voting machine labels, shall be filled by certificate filed with such officer which shall state:

(i) The cause of vacancy and name of the former nominee;

(ii) The name, age, place of residence, post-office address, social security number, and qualifications of the successor nominee; and

(iii) The office and term for which nominated.

(b) The certificate shall be prepared and filed by:

(i) The state central committee of the political party of the former nominee for a partisan office to be voted for by the electors of the entire state or of a district larger than a county, except that the successor nominee for the office of state senator in a multi-county senatorial district shall be selected and certified by the combined county central committees of the former nominee's political party of the counties included in the district;

(ii) The county central committee of the political party of the former nominee for a partisan office to be voted for by the electors of a county or a subdivision thereof;

(iii) The county bar association for the office of justice of the peace.

(c) Vacancies created by failure of write-in nominees to accept nomination must be filled not later than thirty-nine (39) days before the general election.

TITLE 35. PUBLIC HEALTH AND SAFETY.

§ 35-1-304. Treasurer designated; fund to be created; composition and use of fund; preparation and submission of budget; tax levy authorized.

(a) In the case of a county and/or city health department, the county and/or city treasurer, as a part of his official duties as county and/or city treasurer, shall serve as

treasurer of the department, and his official bond as county and/or city treasurer shall extend to and cover his duties as treasurer of the department. In the case of a district health department, the county treasurer of the county in the district having the largest population, as determined by the last federal census, as a part of his official duties as county treasurer, shall serve as treasurer of the district department and his official bond as county treasurer shall extend to and cover his duties as treasurer of the department.

(b) The treasurer of a county and/or city or district health department shall, upon organization of the department, create a county and/or city or district health department fund to which shall be credited:

(i) Any moneys that may be appropriated from the general county fund or funds;

(ii) Any moneys received from state, federal or other grants or donations for local health purposes;

(iii) Any moneys received from mill levies authorized by this act [§§ 35-1-301 to 35-1-309].

(c) Any moneys credited to said fund shall be expended only for maintenance and operation of the department and claims or demands against said fund shall be allowed upon certification by the health officer or a designated member of the board of health.

(d) A county and/or city board of health shall, annually before April 1st of each year, estimate the total cost of maintaining the department for the ensuing fiscal year, and the amount of moneys that may be available from unexpended surpluses or from state or federal grants or other grants or donations. Said estimates shall be submitted in the form of a budget to the board of county commissioners and/or city governing body and said board shall provide any moneys necessary over estimated moneys from surpluses, grants and donations to cover the total cost of maintaining the department for the enusing fiscal year.

(e) A district board of health shall, annually before April

1st of each year, estimate the total cost of maintaining and operating the department for the ensuing fiscal year and the amount of moneys that may be available from unexpended surpluses or from state or federal grants or other grants or donations. Said estimates shall be submitted in the form of a budget to a committee composed of the chairmen of the boards of county commissioners and/or city governing body of all counties and/or cities comprising the district. The cost of maintaining and operating the department, over estimated moneys from surpluses, grants or donations, shall be apportioned by the committee among the counties comprising the district on a basis of population, as determined by the last federal census, of each participating county in proportion to the total population of all counties comprising the district. The boards of county commissioners of the respective counties shall provide any moneys necessary to cover the proportionate share of their county.

(f) A tax levy may be made by the board of county commissioners specifically for the public health purposes of not to exceed one (1) mill made on assessed valuation.

TITLE 39. TAXATION AND REVENUE.

§ 39-2-401. Certification of tax levies.

(a) All governmental entities in Wyoming having the power to levy or require the levy of ad valorem taxes shall annually notify the board of county commissioners of the county in which the entity is located, of the amount of tax to be collected against the taxable property of the district, as follows:

(i) On before the fourth Monday in May by incorporated cities and towns under four thousand (4,000) inhabitants;

(ii) On or before the first Monday in July by the board for levies for livestock inspection as provided by W.S. 11-390 [§ 11-23-308];

(iii) On or before July 31 by all governmental entities subject to the Uniform Municipal Fiscal Procedures Act [§§ 9-7-317 through 9-7-340] and all special purpose districts having the authority under general laws to levy taxes or impose assessments;

(iv) On or before the first Monday in August by the board for state purposes as provided by W.S. 9-559 [§ 9-7-602], 21.1-226 (c) [§ 21-13-303 (c)] and this act.

(b) Tax levies for all governmental entities as certified by the board of county commissioners except as otherwise provided by law following notification pursuant to subsection (a) of this section shall be collected by the county treasurer.

(c) No levy certified by the board of county commissioners shall exceed the statutory or constitutional limitation for the governmental entity for which the levy is made and the county treasurer shall not collect any levy in excess of those limitations.

§ 39-6-108. Distribution of revenue.

(a) Revenue received under this article shall be transferred to the state treasurer who shall distribute it as follows:

(i) All license fees under W.S. 39-6-102 (a) shall be credited to the state general fund;

(ii) Thirty-eight and one-fourth percent (38¼%) of the taxes collected shall be credited to the state general fund;

(iii) Sixty-one and three-fourths percent (61¾%) of the taxes collected shall be distributed to incorporated cities and towns and to boards of county commissioners in the proportion the cigarette taxes derived from sales within each incorporated city or town or county bears to total cigarette license taxes collected. The computation for the distribution shall be made by the board according to the monthly returns filed by the wholesalers.

§ 39-6-210. Distribution of gasoline license taxes.

(a) All gasoline license taxes and fees received by the board under this article shall be transferred to the state treasurer who shall credit them to the proper accounts.

(b) The state treasurer shall deposit all license fees under W.S. 39-6-203 into the state highway fund.

(c) The state treasurer shall make deductions from the taxes collected under this article in the following order:

(i) Deduct not to exceed two percent (2%) of the taxes collected corresponding to the actual cost of the administration of this article for the month and credit the money to the general fund;

(ii) Deduct the pro rata share of the cost of collecting the taxes received from gasoline used for aircraft at any municipal or county airport and distribute the remainder to the city, town or county where the airport is located. These funds shall be used for the maintenance of the airport;

(iii) Deduct the amount necessary to refund to incorporated cities and towns the taxes paid on gasoline used for municipal purposes as provided by W.S. 39-6-212;

(iv) Deduct twenty-five percent (25%) of the remainder after making the deductions specified in paragraphs (i), (ii) and (iii) of this subsection and transfer it to the state highway fund for construction and reconstruction of primary, secondary and forest roads in the state;

(v) Deduct the amount necessary to refund the taxes paid on gasoline used for agricultural purposes as provided by W.S. 39-6-211.

(d) After making the deductions provided by subsection (c) of this section the state treasurer shall distribute the remainder as follows:

(i) Two-thirds shall be distributed as follows:

(A) Twenty-three percent (23%) shall be distributed to county treasurers on July 15 and

quarterly thereafter. Each county treasurer shall credit such revenues to the county road fund for the improvement and maintenance of county roads. The distribution to each county shall be based on:

(I) One-third in the ratio in which the area of the county bears to the total area of the state;

(II) One-third in the ratio in which the rural population including the population within the cities and towns with less than one thousand four hundred (1,400) bears to the total rural population of the state according to the last federal census;

(III) One-third in the ratio in which the assessed valuation of the county bears to the last total assessed valuation of the state.

(B) Two percent (2%) shall be distributed on July 15 and quarterly thereafter to cities and towns having a population of more than one thousand four hundred (1,400) in the ratio which the population of each such city or town bears to the total population of all such cities and towns according to the last federal census;

(C) The amount necessary for the payment of interest upon any state highway bonds;

(D) The remaining revenues shall be credited to the state highway fund for the maintenance, construction and reconstruction of state highways.

(ii) One-sixth shall be distributed as follows:

(A) Seventy-five percent (75%) shall be credited by the state treasurer to the county farm-to-market road account in the highway fund. The highway commission shall allocate to each county a share based on fifty percent (50%) upon the ratio which the rural population of each county bears to the rural population of the state according to the last federal census and fifty percent (50%) based on the

ratio which the area of the county bears to the total area of the state. Any interest earned on invested funds allocated to counties shall be credited to each county's matching fund requirements as provided by W.S. 24-38 [§ 24-2-110];

(B) Twenty-five percent (25%) shall be distributed to incorporated cities and towns to be used in their street and alley program in the ratio which the population of each city or town bears to the total population of all cities and towns according to the last federal census.

(iii) One-sixth shall be distributed monthly to incorporated cities and towns and counties. The distribution to cities and towns shall be based on the taxes paid upon gasoline sold to and distributed by dealers located within each county but outside the incorporated limits of cities and towns. Taxes paid upon gasoline sold and distributed by dealers located outside the state to consumers in the state shall be distributed to the county wherein the consumer is located.

§ 39-6-306. Same; disposition of money received and collected under section 39-6-302 (f).

(a) All revenues received under W.S. 39-6-302 (f) shall be deposited in the capital facilities revenue account within the earmarked revenue fund. Any unexpended balance in the capital facilities revenue account may be invested by the state treasurer and interest earned shall be credited to the capital facilities revenue account.

(b) The monies in the capital facilities revenue account shall be administered by the capitol building commission and disbursed by the commission for the following purposes:

(i) and (ii) Repealed by Laws 1979, ch. 159, § 3.

(iii) Thirty percent (30%) of the tax revenues deposited in the capital facilities revenue account shall be transferred to a school district capital construction account within the earmarked revenue fund to finance

the school districts' capital construction entitlements authorized by W.S. 21-15-101 through 21-15-104, or such proportionate part of each entitlement as the revenues available under this paragraph bears to the total of all such entitlements;

(iv) Ten percent (10%) of the tax revenues deposited in the capital facilities revenue account shall be transferred to an earmarked revenue fund account to finance in whole or in part new or preexisting community college construction. Allocations by the community college commission to the community colleges shall be made as soon as practicable following receipt of deposit information, and shall be made according to a distribution formula as follows:

(A) Fifty percent (50%) of the amount deposited shall be distributed to the community colleges in the same proportion as full time equivalency enrollment for the individual college bears to the total enrollment for all the colleges. Full time equivalency enrollment, as defined by the community college commission, shall be determined at the semester end for the most recently completed semester prior to the deposit;

(B) Twenty-five percent (25%) of the amount deposited shall be distributed to the community colleges in equal amounts;

(C) Twenty-five percent (25%) of the amount deposited shall be distributed to the colleges or a college as may be determined by the community college commission based upon a consideration of need and priorities within the community college system. The colleges shall submit construction proposals and funding requests to the commission to facilitate these discretionary distributions;

(D) While processing the discretionary distribution provided by subparagraph (iv)(C) of this

subsection, the community college commission may specify its intention to allocate future discretionary portions to specific projects or purposes;

(E) Nothing provided under this paragraph shall prevent the use of other funds available under W.S. 39-6-302(f) and this section to finance community college construction.

(v) The balance of the revenues shall be credited to the state highway fund for constructing, repairing and acquiring highways and related facilities.

(c) and (d) Repealed by Laws 1979, ch. 159, § 3.

§ 39-6-411. Distribution of sales tax to general fund, counties, cities and towns; deduction for administrative costs.

(a) License fees, penalties and interest collected by the board pursuant to this article shall be transferred to the state treasurer who shall credit them to the general fund.

(b) Revenue collected by the board under W.S. 39-6-404 shall be transferred to the state treasurer who shall:

(i) Credit two-thirds (⅔) to the state general fund except as provided by subsections (c) and (d) of this section;

(ii) Deduct one percent (1%) from the remaining one-third to cover all administrative expenses and costs attributable to the one-third share and credit the general fund for that amount;

(iii) The balance shall then be paid monthly to the treasurers of the counties, cities and towns for payment into their respective general funds. The percentage of the balance that will be distributed to each county and its cities and towns will be determined by computing the percentage that net sales taxes collected attributable to vendors in each county including its cities and towns bear to total net sales taxes collected of vendors in all counties including their cities and towns. This

percentage of the balance shall be distributed within each county as follows:

(A) To each county in the proportion that the population of the county situated outside the corporate limits of its cities and towns bears to the total population of the county including cities and towns;

(B) To each city and town within the county in the proportion the population of the city or town bears to the population of the county.

(c) Whenever any person commences after the effective date of this act to construct an industrial facility, as those terms are defined in W.S. 35-12-102 (a), under a permit issued pursuant to W.S. 35-12-106, the state treasurer shall thereafter pay to the county, and cities and towns of that county in which the industrial facility is located, impact assistance payments from the monies available under W.S. 39-6-411(b)(i). Each payment shall be equal to the excess of each monthly payment made under W.S. 39-6-411(b)(iii) during the period of construction over the base period amount and shall continue during the period of construction. Such impact assistance payments shall be distributed to the county and to the cities and towns therein in the same ratio as that established under W.S. 39-6-411(b)(iii). The impact assistance payment shall be in addition to all other distributions under W.S. 39-6-411, but no impact assistance payment shall be made for any period in which the county or counties are not imposing the full one percent (1%) tax authorized by W.S. 39-6-412 and 39-6-518. For purposes of this subsection, the industrial facility will be deemed to be located in the county in which a majority of the construction costs will be expended, provided that upon a request from the county commissioners of any adjoining county to the industrial siting council, the council may determine that the social and economic impacts from construction of the industrial facility upon the adjoining county are significant and establish the ratio of impacts between the counties and

certify that ratio to the state treasurer who will thereafter distribute the impact assistance payment to the counties pursuant to that ratio.

(d) As used in subsection (c) of this section:

(i) "Period of construction" begins at the commencement of construction and ends when the physical components of the industrial facility are ninety percent (90%) complete, provided, if payments are already being made under this act, commencement of construction of another industrial facility will not be considered for purposes of establishing a new base period or determining when payments will commence under this act, but will only be considered for determining when the period of construction ends;

(ii) "Base period amount" is the average monthly distribution under W.S. 39-6-411(b)(iii) for the twelve (12) month period immediately prior to the commencement of construction, provided that on each anniversary date of commencement of construction the state treasurer shall establish a new base period amount by multiplying the base period amount by a factor of 1.08.

§ 39-6-412. Political subdivisions prohibited from imposing sales taxes except as provided herein; procedures for imposing tax; distribution of receipts.

(a) The state preempts the field of imposing tax upon retail sales of tangible personal property, admissions and services as provided by this article and no county, city, town or other political subdivision may impose, levy or collect taxes upon retail sales, admissions and services except as provided in this section.

(b) Any county of the state may impose an excise tax at a rate in increments of one-half of one percent (.5%) not to exceed a rate of one percent (1%) upon retail sales of tangible personal property, admissions and services made

within the county. The purpose of the tax is for general revenue.

(c) No tax shall be imposed under this section and W.S. 39-6-518 until the proposition to impose the taxes is submitted to the vote of the qualified electors of the county and a majority of those casting their ballots vote in favor of imposing the taxes. Excise taxes imposed under this section and W.S. 39-6-518 shall commence on the first day of the second month following the election approving the imposition of the tax.

(d) The proposition to impose an excise tax shall be at the expense of the county and be submitted to the electors of the county upon the receipt by the board of county commissioners of a petition requesting the election signed by at least ten percent (10%) of the electors of the county. The number of electors required shall be determined by the number of votes cast at the last general election. The election shall be at the direction and under the supervision of the board of county commissioners.

(e) The proposition may be submitted at any general election or at a special election called for that purpose. A notice of election shall be given in at least one (1) newspaper of general circulation published in the county wherein the election is to be held and shall specify the object of the election. The notice shall be published at least once each week for a thirty (30) day period preceding the election. At the election the ballots shall contain the words "for the county sales and use tax" and "against the county sales and use tax". If the proposition is approved the same proposition shall be submitted at each subsequent general election until the proposition is defeated.

(f) If the proposition to impose or continue the tax is defeated the proposition shall not again be submitted to the electors of the county for at least one (1) year. If the proposition is defeated at any general election following initial adoption of the proposition the tax is repealed and shall

not be collected following June 30 of the year immediately following the year in which the proposition is defeated.

(g) If the proposition is approved the board of county commissioners shall by ordinance impose an excise tax upon retail sales of tangible personal property, admissions and services and upon sales and storage, use and consumption of tangible personal property. The ordinance shall include the following:

(i) A provision imposing an excise tax upon every retail sale of tangible personal property, admissions and services made within the county and upon sales made within the county and storage, use and consumption of tangible personal property in the county at the rate approved by the electors;

(ii) Provisions identical to those contained in this article except for W.S. 39-6-401(a) and 39-6-412, insofar as they relate to sales taxes and in article 5 of this chapter, except for W.S. 39-6-501(a), insofar as they relate to use taxes, except the name of the county as the taxing agency shall be substituted for that of the state and an additional license to engage in business shall not be required if the vendor has been issued a state license pursuant to law;

(iii) A provision that any amendments made to this article or article 5 of this chapter not in conflict with this section or W.S. 39-6-518 shall automatically become a part of the sales tax ordinance of the county;

(iv) A provision that the county shall contract with the commission prior to the effective date of the county sales and use tax ordinance whereby the commission will perform all functions incident to the administration of the sales and use tax ordinance of the county;

(h) The administration of the county sales and use tax is vested in the commission which may prescribe forms and rules and regulations for making returns and for the ascertainment, assessment and collection of the taxes. The com-

mission shall keep complete records of all monies received and disbursed by it.

(j) All revenue collected by the commission from the taxes imposed by this section and W.S. 39-6-518 shall be transferred to the state treasurer who shall:

(i) Deduct one percent (1%) to defray the costs of collecting the tax and administrative expenses incident thereto which shall be deposited into the general fund;

(ii) Deposit the remainder into the trust and agency fund for monthly distribution to counties imposing the tax and its cities and towns. The distribution to the county and its cities and towns will be equal to the amount collected in each county less the costs of collection as provided by paragraph (i) of this subsection. The distribution shall be as follows:

(A) To the county for deposit into its general fund in the proportion the population of the county situated outside the corporate limits of its cities and towns bears to the total population of the county;

(B) To the incorporated cities and towns within the county for deposit into their treasuries in the proportion the population of each city or town bears to the total population of the county.

§ 39-6-512. Disposition of revenue received.

(a) License fees, penalties and interest collected by the board pursuant to this article shall be transferred to the state treasurer who shall credit them to the general fund.

(b) Revenue collected by the board from the taxes imposed by this article shall be transferred to the state treasurer who shall:

(i) Credit two-thirds (⅔) to the general fund except as provided by subsections (d) and (e) of this section;

(ii) Deduct from the remaining one-third (⅓), one percent (1%) to cover all administrative expenses and costs

attributable to the one-third (⅓) share and credit the general fund for that amount;

(iii) The remainder shall then be paid monthly to the treasurers of the counties, cities and towns for payment into their respective general funds. The percentage of the remainder that will be distributed to each county and its cities and towns will be determined by computing the percentage that net use taxes collected attributable to vendors in each county including its cities and towns bear to total net use taxes collected of vendors in all counties including their cities and towns. The distribution shall be as follows:

(A) To each county in the proportion that the population of the county situated outside the corporate limits of its cities and towns bears to the total population of the county including cites and towns;

(B) To each city and town within the county in the proportion the population of the city or town bears to the population of the county.

(c) In addition to the distribution in subsection (b) of this section, one-third (⅓) of use taxes accruing from out-of-state vendors will be distributed to counties, cities and towns in the same percentage as determined in W.S. 39-6-411(b)(iii).

(d) Whenever any person commences after the effective date of this act to construct an industrial facility, as those terms are defined in W.S. 35-12-102(a), under a permit issued pursuant to W.S. 35-12-106, the state treasurer shall thereafter pay to the county, and cities and towns of that county in which the industrial facility is located, impact assistance payments from the monies available under W.S. 39-6-512(b)(i). Each payment shall be equal to the excess of each monthly payment made under W.S. 39-6-512(b)(iii) during the period of construction over the base period amount and shall continue during the period of construction. Such impact assistance payments shall be distributed to the county and to the cities and towns therein in the same

ratio as that established under W.S. 39-6-512(b)(iii). The impact assistance payment shall be in addition to all other distributions under W.S. 39-6-512, but no impact assistance payment shall be made for any period in which the county or counties are not imposing the full one percent (1%) tax authorized by W.S. 39-6-412 and 39-6-518. For purposes of this subsection, the industrial facility will be deemed to be located in the county in which a majority of the construction costs will be expended, provided that upon a request from the county commissioners of an adjoining county to the industrial siting council, the council may determine that the social and economic impacts from construction of the industrial facility upon the adjoining county are significant and establish the ratio of impacts between the counties and certify that ratio to the state treasurer who will thereafter distribute the impact assistance payment to the counties pursuant to that ratio.

(e) As used in subsection (d) of this section:

(i) "Period of construction" begins at the commencement of construction and ends when the physical components of the industrial facility are ninety percent (90%) complete, and provided, if payments are already being made under this act, commencement of construction of another industrial facility will not be considered for purposes of establishing a new base period or determining when payments will commence under this act, but will only be considered for determining when the period of construction ends;

(ii) "Base period amount" is the average monthly distribution under W.S. 39-6-512(b)(iii) for the twelve (12) month period immediately prior to the commencement of construction, provided that on each anniversary date of commencement of construction the state treasurer shall establish a new base period amount by multiplying the base period amount by a factor of 1.08.

TITLE 42. WELFARE.

§ 42-2-102. Grants to county offices.

The department, from funds in the state treasury appropriated for that purpose, may transfer and deposit to the credit of the county office grants-in-aid in amounts approved by the department for general assistance and emergency assistance.

SESSION LAWS OF WYOMING, 1979

CHAPTER 38

Section 1. W.S. 21-13-309(a) is amended to read:

21-13-309. Determination of amount to be included in foundation program for each district.

(a) The amount to be included in the foundation program of a district for general operation expense shall be determined by multiplying the number of classroom units allotted to a district by twenty-one thousand seven hundred dollars ($21,700.00) for the fiscal year beginning July 1, 1978 and twenty-seven thousand three hundred dollars ($27,300.00) for each fiscal year thereafter.

CHAPTER 159

Section 4. All emergency school loans made pursuant to W.S. 21-13-601 through 21-13-609 shall be immediately repaid into the permanent land fund from the general fund, two million dollars ($2,000,000.00) being hereby appropriated from the general fund for that purpose. Annual entitlements of any school district under W.S. 21-15-101 whose loan is being retired under this section shall be credited to the general fund until the amount of the loan paid off is reimbursed to the general fund. No interest is payable on the general fund advance to repay the permanent land fund loan.

SESSION LAWS OF WYOMING, 1980

CHAPTER 13

Section 1. W.S. 21-15-101(c) is amended to read:

21-15-101. School district capital construction entitlements; computation.

(c) To compute the annual entitlement of each Wyoming school district the department shall multiply the total classroom units in each Wyoming school district times four thousand dollars ($4,000.00) and subtract the product of four (4) mills times the current assessed value of the school district for which the computation is made. The entitlement shall be reduced proportionately if the funds made available by W.S. 21-15-103 are insufficient. The entitlement shall annually be paid to each school district on or before January 1 except as provided by W.S. 21-15-104(b).

CHAPTER 55

Section 1. W.S. 21-13-309(a) is amended to read:

21-13-309. Determination of amount to be included in foundation program for each district.

(a) The amount to be included in the foundation program of a district for general operation expense shall be determined by multiplying the number of classroom units allotted to a district by thirty-two thousand three hundred dollars ($32,300.00) for the fiscal year beginning July 1, 1980.

Section 2. There is appropriated twenty-seven million, six hundred and sixty-six thousand, five hundred dollars ($27,666,500.00) from the general fund of the State of Wyoming for the purpose of funding the public school foundation program.

CHAPTER 56

Section 3. Two million six hundred twenty-five thousand dollars ($2,625,000.00) available under W.S. 9-7-903(k) shall be distributed to Goshen County School District No. 1 as advance entitlements following the provisions and requirements of W.S. 21-15-104 and future entitlements of Goshen County School District No. 1 shall be credited to the account provided by W.S. 9-7-903(g) introductory paragraph until the advance is repaid.

Section 4. There is appropriated from the general fund the sum of one million six hundred thousand dollars ($1,600,000.00), or as much thereof as is necessary, to immediately repay in full any outstanding school district loan balances pursuant to Section 4, Chapter 159, Session Laws 1979. Thereafter, the capital construction entitlements of the affected school districts shall be distributed to the school districts and are no longer encumbered.

Section 5. Two million dollars ($2,000,000.00) is appropriated from the general fund to be expended by the farm loan board for grants under the requirements of W.S. 9-7-903 (g) to school districts.

CHAPTER 69

Section 1.

(a) Fifty thousand dollars ($50,000.00) is appropriated from the general fund to the legislative service office for a study of modifying state and local funding of education as necessitated by the Wyoming Supreme Court in *Washakie County School District Number One et al v. Ed Herschler, et al.* The speaker of the house shall appoint five (5) committee members, not more than three (3) of whom shall be from the same party and the president of the senate shall appoint five (5) committee members, not more than

three (3) of whom shall be from the same party. The management council shall designate one (1) legislator as chairman of the committee.

(b) The committee shall meet and organize no later than April 1, 1980, and shall meet as often thereafter as necessary. The committee shall review funding of education in Wyoming and submit a report including recommendations for legislation to each member of the legislature and the governor on or before October 15, 1980.

(c) The legislative service office shall provide any staff services requested by the committee and authorized by the management council. The committee may request any information and assistance from any state agency or political subdivision. All meetings, records and reports of the committee shall be open to the public. Records and reports of the committee shall be maintained by the legislative service office.

SESSION LAWS OF WYOMING, 1981

ORIGINAL HOUSE JOINT RESOLUTION NO. 3

A JOINT RESOLUTION proposing an amendment to Article 15, Sections 15 and 17 of the Constitution of the State of Wyoming to provide for an additional state levy of six mills for education, to decrease the county levy for education from twelve to six mills and to permit the legislature to authorize a special school district property tax levy and to determine allocation of a portion of this levy for the support of education among the several school districts within the state.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF WYOMING, two-thirds of all the members of the two houses, voting separately, concurring therein:

Section 1. The following amendment to Article 15, Sections 15 and 17 of the Wyoming Constitution is proposed for submission to the electors of the State of Wyoming at the next general election for approval or rejection, to become valid as a part of the constitution if ratified by a majority of the electors. The amendment is as follows:

Article 15, Section 15. State tax for support of public schools. For the support of the public schools in the state there may be levied each year a state tax not exceeding twelve mills on the dollar of the assessed valuation of the property in the state.

Article 15, Section 17. County levy for support and maintenance of public schools. There shall be levied each year in each county of the state a tax of not to exceed six mills on the dollar of the assessed valuation of the property in each county for the support and maintenance of the public schools. This tax shall be collected by the county treasurer and disbursed among the school districts within the county as the legislature shall provide. The legislature may authorize boards of trustees of school districts to levy a special tax on the property of the district. The legislature may also provide for the distribution among one or more school districts of not more than three-fourths of any revenue from the special school district property tax in excess of a state average yield, which shall be calculated each year, per average daily membership.

Section 2. The Secretary of State of Wyoming shall endorse the following statement on the proposed amendment:

The adoption of this amendment will permit an increase of the state levy for education by six mills, a decrease of the county levy for education by six mills and permit the legislature to authorize a special school district property tax levy and to allocate a portion of this levy in an equitable manner in response to the Wyoming Supreme Court deci-

sion of January 1980, mandating equalization of school finance.

CHAPTER 16

Section 1. W.S. 9-3-706(a)(ii) and 9-6-164(a) are amended to read:

9-3-706. Powers generally.

(a) The board of charities and reform shall, besides such other powers as may be conferred upon it in accordance with the law, have:

(ii) General supervision and control of all buildings and institutions belonging to or used by the state for charitable, penal or reformatory purposes, including the state hospital at Evanston, Uinta county; the state penitentiary at or near Rawlins, Carbon county; the Wyoming soldiers' and sailors' home located at Buffalo, Johnson county; the Wyoming state training school at Lander, Fremont county; the Wyoming industrial institute located at Worland, Washakie county; the Big Horn hot springs reserve located at Thermopolis, Hot Springs county; the state children's home at Casper, Natrona county; the Saratoga hot springs state reserve at Saratoga, Carbon county; the girls' industrial institute, at Sheridan, Sheridan county; the Wyoming sanitarium at Basin, Big Horn county; and the Wyoming women's center at Lusk, Niobrara county. Deaf and blind persons, juvenile delinquents and orphans and other dependent children, who are not otherwise adequately provided for, are also under the jurisdiction of the board;

9-6-164. The Wyoming women's center; authority to establish and maintain; purpose; supervision.

(a) The Wyoming women's center is established at Lusk, Wyoming, to provide a place of confinement, employment

and training for females convicted of offenses punishable by imprison..ient in the state penitentiary.

CHAPTER 44

Section 1. W.S. 9-7-903(g) introductory paragraph and (k), 11-34-202(a) and by creating a new subsection (d) and 36-3-110(b) are amended to read:

9-7-903. Government royalties construction revenues; educational purposes.

(g) Not to exceed forty million dollars ($40,000,000.00) of the total proceeds of all bonds issued under subsection (b) of this section may be granted or advanced to school districts. Of this amount up to twenty-five million dollars ($25,000,000.00) of bond proceeds or sixty percent (60%) of royalties under subsection (k) of this section may be advanced to school districts under W.S. 21-15-104. Repayments of advanced entitlements shall be credited to a capital reserve account within the earmarked revenue fund which may only be expended upon legislative appropriation. Up to fifteen million dollars ($15,000,000.00) of bond proceeds or forty percent (40%) of royalties under subsection (k) of this section may be disbursed to school districts as grants by the farm loan board following the recommendations of the state superintendent of public instruction. Grants shall only be made to school districts which the superintendent of public instruction finds have a critical need for school facilities, cannot raise sufficient funds and which are using or will use construction entitlements to finance the project unless the construction entitlements are legally committed to another project. The criteria for determining the eligibility of a school district for receiving a grant are:

(k) All revenues received under W.S. 9-7-901(a)(viii) prior to the issuance of bonds under subsection (b) of this section and all revenues in excess of those required to be otherwise expended or retained pursuant to the resolution or

resolutions authorizing the issuance of bonds under subsection (b) of this section may be used by the board to make grants or advances of entitlements under subsections (g) or (h) of this section in the same manner as the proceeds of the bonds are to be used, four-sevenths (4/7) under subsection (g) of this section and three-sevenths (3/7) under subsection (h) of this section.

11-34-202. Revenue to be credited to earmarked revenue fund; use thereof; disposition of excess.

(a) Except as otherwise provided by law, the Wyoming farm loan board shall transmit any revenue received to the state treasurer to be credited to an account within the earmarked revenue fund for the purposes specified in W.S 9-7-903(g).

(d) Following a general fund appropriation by the legislature for administrative expenses, amounts expended pursuant to the appropriation shall be transferred monthly from the account provided by subsection (a) of this section to the general fund as provided by W.S. 9-7-505(b) for the highway fund and trust and agency fund in certain instances. Revenue currently in the account formerly provided for by W.S. 11-34-202(a), (b) and (c), as those subsections existed prior to the creation of this subsection, may be expended for purposes formerly authorized until July 1, 1982 at which time the revenue within the account shall be credited to the account provided by subsection (a) of this section.

36-3-110. Fees.

(b) All money collected for fees shall be paid to the treasurer of the state monthly and shall be credited to the account provided by W.S. 11-34-202(a) for the purpose provided by W.S. 9-7-903(g).

Section 2. W.S. 11-34-202(b) and (c) is repealed.

CHAPTER 45

Section 1. W.S. 21-15-101(a), 21-15-102 and 21-15-104 are amended to read:

21-15-101. School district capital construction entitlements; computation.

(a) Each Wyoming school district may finance a capital construction project in whole or in part as provided by W.S. 21-15-101 through 21-15-104.

21-15-102. Use of capital construction entitlements.

(a) The annual capital construction entitlement distributed pursuant to W.S. 21-15-101(c) shall be deposited in a separate account and may only be expended to finance a capital construction project for the school district upon majority vote of the school district trustees. The entitlement may not be encumbered except as provided by W.S. 21-15-104 unless legally encumbered before July 1, 1982. The entitlement may only be:

(i) Accumulated in an interest-bearing account earmarked for future construction needs in building and and equipping school facilities;

(ii) Expended to retire an existing bond issue;

(iii) Expended to acquire and develop building sites;

(iv) Expended to repay advances as provided by W.S. 21-15-104;

(v) Expended for a continuing building project including renovation and repair of existing buildings or improvements which would conserve energy;

(vi) Expended as lease payments or rent for the use of facilities by the school district. This authority terminates on July 1, 1983 as to leases entered into after June 30, 1983. This section remains effective for leases entered into before July 1, 1983.

21-15-104. Capital construction; advances.

(a) A Wyoming school district receiving annual entitlements under W.S. 21-15-101 may apply for and receive advance entitlements as determined by the department of education under W.S. 21-15-101(c) as hereinafter provided from the permanent Wyoming mineral trust fund, revenues provided by W.S. 9-7-903 or any other funds authorized by the legislature including general fund appropriations. No advance from the permanent Wyoming mineral trust fund shall be in an amount which when added to the current indebtedness of the school district will exceed the debt limit of the school district. An advance from revenues other than the Wyoming permanent mineral trust fund does not constitute an indebtedness of the school district receiving the advance. The farm loan board with the recommendation of the state superintendent of public instruction shall approve the advance entitlements if it appears the project is essential to the district and the district is indebted or will be indebted within three (3) months to at least eighty-five percent (85%) of its debt capacity with outstanding bonds payable from general property tax levies of the school district and including any advances from the Wyoming permanent mineral trust fund. The amount of entitlement granted to any school district shall be determined as follows:

(i) Divide the most recent assessed valuation of the state by the most recent determination of classroom units in the state, subtract the most recent assessed valuation of the district divided by the most recent determination of classroom units in the district and multiply the difference by ten percent (10%) and also by the most recent determination of classroom units in the district applying for the advance entitlements;

(ii) The district may receive not to exceed the sum so computed as advance entitlements.

(b) Before approving any advance entitlements the project shall have been approved by the qualified electors of

the school district in the case of advance entitlements from any revenues other than the permanent mineral trust fund and the indebtedness shall have been approved by the qualified electors of the school district if the advance is from permanent Wyoming mineral trust funds. If the advance entitlements are approved the state treasurer shall disburse the money from the appropriate fund as necessary to pay costs of the project as they accrue. The farm loan board shall adopt rules and regulations to implement this section and to determine priorities based on need for construction loans or grants among eligible school districts based on:

(i) The assessment of the quality and quantity of student space in existing buildings used for instruction in each school district;

(ii) The determination of pupil space needs or the excess of pupil space available for instructional purposes in each school building;

(iii) The projection and probability of changes in student populations within each school district for an ensuing ten (10) year period.

(c) The farm loan board shall publish the criteria to be used in determining the eligibility for state assistance on school construction projects and the procedures to be followed during the review process.

(d) If an advance of monies is made to a school district from any source other than the permanent mineral trust fund, future entitlements of the district pursuant to W.S. 21-15-101(c) shall be paid into the earmarked revenue fund provided by W.S. 9-7-903(g), or if advances were made from the permanent mineral trust fund, into the permanent Wyoming mineral trust fund, until the advance is repaid. The unpaid balance of each advance from revenues under W.S. 9-7-903 and any source other than the permanent mineral trust fund shall not bear interest and a school district receiving an advanced entitlement from revenues under W.S. 9-7-903 or any revenues other than the permanent mineral trust fund has no obligation to repay the advance except

as provided by this subsection. The unpaid balance of each advance from the permanent Wyoming mineral trust fund shall bear interest at six percent (6%) per annum.

CHAPTER 46

Section 1. W.S. 21-13-314(c) is amended to read:

21-13-314. Supplemental entitlements to school districts.

(c) To be eligible for supplemental entitlement, a school district during the preceding fiscal year shall have levied not less than one (1) mill below the maximum tax allowed, without a vote of the people, under W.S. 21-13-101.

CHAPTER 76

Section 1. W.S. 28-2-108 through 28-2-111 are created to read:

28-2-108. Counties as election districts.

(a) Each organized county constitutes a separate election district for the election of representatives. Each organized county constitutes a separate election district for the election of senators except that:

(i) Campbell and Johnson counties combined constitute one (1) senatorial district;

(ii) Crook and Weston counties combined constitute one (1) senatorial district;

(iii) Hot Springs and Washakie counties combined constitute one (1) senatorial district;

(iv) Teton and Sublette counties combined constitute one (1) senatorial district;

(v) Goshen and Niobrara counties combined constitute one (1) senatorial district.

28-2-109. Ratios and apportionment.

(a) The ratios for the apportionment of senators and representatives are fixed as follows:

(i) The ratio for the apportionment of senators is the smallest number of people per senator which when divided into the population in each senate district as shown by the official results of the 1980 federal decennial census with fractions rounded to the nearest whole number results in a senate with thirty (30) senators;

(ii) The ratio for the apportionment of the representatives is the smallest number of people per representative which when divided into the population in each representative district as shown by the official results of the 1980 federal decennial census with fractions rounded to the nearest whole number results in a house with sixty-three (63) representatives;

(iii) If the number of representatives for any county is rounded to zero (0) under the formula in paragraph (a)(ii) of this section, that county shall be given one (1) representative which is in addition to the sixty-three (63) representatives provided by paragraph (a)(ii) of this section;

(iv) If the provisions of paragraph (a)(iii) of this section are found to be unconstitutional or have an unconstitutional result, then Niobrara County shall be joined to Goshen County in a single representative district and the house of representatives shall be apportioned as provided by paragraph (a)(ii) of this section.

(b) Representation in the state senate is hereby apportioned and divided among the several senatorial districts as follows:

(i) Albany County shall have two (2) senators;

(ii) Big Horn County shall have one (1) senator;

(iii) Campbell and Johnson counties combined shall have two (2) senators;

(iv) Carbon County shall have one (1) senator;

(v) Converse County shall have one (1) senator;

(vi) Crook and Weston counties combined shall have one (1) senator;

(vii) Fremont County shall have two (2) senators;

(viii) Goshen and Niobrara counties combined shall have one (1) senator;

(ix) Hot Springs and Washakie counties combined shall have one (1) senator;

(x) Laramie County shall have four (4) senators;

(xi) Lincoln County shall have one (1) senator;

(xii) Natrona County shall have four (4) senators;

(xiii) Park County shall have one (1) senator;

(xiv) Platte County shall have one (1) senator;

(xv) Sheridan County shall have two (2) senators;

(xvi) Sublette and Teton counties combined shall have one (1) senator;

(xvii) Sweetwater County shall have three (3) senators; and

(xviii) Uinta County shall have one (1) senator.

(c) Representation in the state house of representatives is hereby apportioned and divided among the several representative districts as follows:

(i) Albany County shall have four (4) representatives;

(ii) Big Horn County shall have two (2) representatives;

(iii) Campbell County shall have three (3) representatives;

(iv) Carbon County shall have three (3) representatives;

(v) Converse County shall have two (2) representatives;

(vi) Crook County shall have one (1) representative;

(vii) Fremont County shall have five (5) representatives;

(viii) Goshen County shall have two (2) representatives;

(ix) Hot Springs County shall have one (1) representative;

(x) Johnson County shall have one (1) representative;

(xi) Laramie County shall have nine (9) representatives;

(xii) Lincoln County shall have two (2) representatives;

(xiii) Natrona County shall have nine (9) representatives;

(xiv) Niobrara County shall have one (1) representative;

(xv) Park County shall have three (3) representatives;

(xvi) Platte County shall have two (2) representatives;

(xvii) Sheridan County shall have three (3) representatives;

(xviii) Sublette County shall have one (1) representative;

(xix) Sweetwater County shall have five (5) representatives;

(xx) Teton County shall have one (1) representative;

(xxi) Uinta County shall have two (2) representatives;

(xxii) Washakie County shall have one (1) representative; and

(xxiii) Weston County shall have one (1) representative.

28-2-110. Effective date of changes in senate districts. Any changes in senate districts and in the number of senators in those districts are effective for the 1982 elections and the forty-seventh (47th) Wyoming legislature, except that the change of the Goshen-Platte senate district and the Converse-Niobrara senate district to the Converse district, the Platte district and the Goshen-Niobrara district is effective for the 1984 elections and the forty-eighth (48th)

Wyoming legislature. The fact that a senator under the new apportionment shall represent only a portion of the district which elected him is not cause to abridge the term of office of that senator.

28-2-111. Balance of classes of senators. If a senate district represented by more than one (1) senator in the forty-sixth (46th) Wyoming legislature will be represented by fewer senators in the forty-seventh (47th) Wyoming legislature under the provisions of this apportionment, the reductions shall be effected by reducing the number of senators to be elected in the 1982 general election. The senator from the new Lincoln county senate district created by this reapportionment shall be elected to a four (4) year term at the 1982 general election. If the class of senators to be elected in 1982 under this apportionment has more than one (1) member fewer than the class to be elected in 1984, then one (1) of the Laramie county senators elected in 1984 shall be elected only for a two (2) year term. After the 1984 general election the secretary of state shall determine which senator was elected to a two (2) year term by a random process in which each senator elected in Laramie county in 1984 has an equal chance of being selected.

Section 2. W.S. 28-2-101 through 28-2-107 are repealed, except for the purpose of representation in the forty-sixth Wyoming legislature, the senate and house districts and apportionment set forth in W.S. 28-2-101 through 28-2-107 shall continue in effect for the remainder of the term of the forty-sixth Wyoming legislature and as provided in W.S. 28-2-110.

Section 3. It is hereby declared the policy of this state is to preserve the integrity of county boundaries as election districts for the house of representatives. The legislature has considered the present population, needs, and other characteristics of each county. The legislature finds that

the needs of each county are unique and the interests of each county must be guaranteed a voice in the legislature. The legislature therefore, will utilize the provisions of article 3, section 3 of the Wyoming constitution as the determining standard in the reapportionment of the Wyoming house of representatives which guarantees each county at least one (1) representative. The legislature finds that the opportunity for oppression of the people of this state or any of them is greater if any county is deprived a representative in the legislature than if each is guaranteed at least one (1) representative. The legislature finds that the dilution of the power of counties which join together in making these declarations is trivial when weighed against the need to maintain the integrity of county boundaries. The legislature also finds that it is not practical or necessary to increase the size of the legislature beyond the provisions of this act in order to meet its obligations to apportion in accordance with constitutional requirements consistent with this declaration.

Section 4. Except as otherwise provided in this act, this act is effective July 1, 1981.

CHAPTER 123

Section 1. W.S. 21-13-309(a) is amended to read:

21-13-309. Determination of amount to be included in foundation program for each district.

(a) The amount to be included in the foundation program of a district for general operation expense shall be determined by multiplying the number of classroom units allotted to a district by thirty-seven thousand three hundred dollars ($37,300.00) for the fiscal year beginning July 1, 1981.

Section 2. There is appropriated five million dollars ($5,000,000.00) from the general fund for the purpose of this act.

CHAPTER 150

Section 1. W.S. 21-15-104(b) is amended to read:

21-15-104. Capital construction; advances.

(b) Except as authorized by the farm loan board, if an advance of monies is made to a school district, future entitlements of the district pursuant to W.S. 21-15-101(c) shall be paid into the earmarked revenue fund as provided by W.S. 9-7-903(g) or into the permanent Wyoming mineral trust fund, as the case may be, until the advance is repaid. The farm loan board may authorize a percent less than one hundred percent (100%) of each year's entitlement to be paid into the earmarked revenue fund or permanent mineral trust fund for outstanding and future advance entitlements so long as the percent authorized to be paid is projected to recapture the advance entitlement plus interest, if any, within seven (7) years from the date the advance entitlement was granted. The unpaid balance of each advance from revenues under W.S. 9-7-903 shall not bear interest and a school district receiving an advanced entitlement from revenues under W.S. 9-7-903 has no obligation to repay the advance except as provided by this subsection. The unpaid balance of each advance from the permanent Wyoming mineral trust fund shall bear interest at six percent (6%) per annum.

SESSION LAWS OF WYOMING, 1982

CHAPTER 38

Section 1. W.S. 9-7-901(a)(viii) and by creating a new

paragraph (xi) and 9-7-903(a), (b), (d)(vii), (g) introductory paragraph and (h) are amended to read:

9-7-901. Distribution and use of federal government royalties.

(a) All monies received by the state of Wyoming from the secretary of the treasury of the United States under the provisions of the act of congress of February 25, 1920 (41 Stat. 437, 450; 30 U.S.C. §§ 181, 191), as amended, except as provided by subsection (b) of this section, shall be deposited in the trust and agency fund and shall be distributed by the state treasurer as follows:

(viii) Five and seven-tenths percent (5.7%) shall be deposited in a capital construction account to be expended as provided by W.S. 9-7-903;

(xi) Four and three-tenths percent (4.3%) shall be deposited in a capital construction account to be expended as provided by W.S. 9-7-903.

9-7-903. Government royalties construction revenues; educational purposes.

(a) Revenues received under W.S. 9-7-901(a)(viii) and (xi) shall be credited to the capital construction accounts. The revenues shall be used to finance state revenue bonds as provided by this section.

(b) The farm loan board may borrow money in a principal amount not to exceed seventy million dollars ($70,000,000.00) by the issuance from time to time of one (1) or more series of revenue bonds. The board may encumber revenues under W.S. 9-7-901(a)(viii) for bonds in total amounts not to exceed forty million dollars ($40,000,000.00) issued for capital construction projects under subsection (g) of this section and revenues under W.S. 9-7-901(a)(xi) for bonds in total amounts not to exceed thirty million dollars ($30,000,000.00) issued for capital construction projects under subsection (h) of this section. Any bonds issued under this section, together with any interest accru-

ing thereon and any prior redemption premiums due in connection therewith, are payable and collectible solely out of revenues authorized under subsection (a) of this section. The bond holders may not look to any general or other fund for payment of the bonds except the revenues pledged therefor. The bonds shall not constitute an indebtedness or a debt within the meaning of any constitutional or statutory provision or limitation. The bonds shall not be considered or held to be general obligations of the state but shall constitute its special obligations and the board shall not pledge the state's full faith and credit for payment of the bonds.

(d) Any bonds issued under this section shall:

(vii) Be additionally secured by a reserve fund created from revenues received under W.S. 9-7-901 (a)(viii) in the case of school districts or (xi) in the case of community colleges or from the proceeds of the bonds, or both, in such amount as determined by the farm loan board but not to exceed an amount equal to ten percent (10%) of the revenue bonds outstanding.

(g) Not to exceed forty million dollars ($40,000,000.00) of bonds issued under subsection (b) of this section and revenues under W.S. 9-7-901(a)(viii) not pledged to the repayment of a bond issue may be granted or advanced to school districts. As used in this subsection "school districts" includes boards of cooperative educational services under W.S. 21-20-101 through 21-20-109. Of these amounts up to twenty-five million dollars ($25,000,000.00) of bond proceeds or sixty percent (60%) of revenues under W.S. 9-7-901(a)(viii) not pledged to the repayment of a bond issue may be advanced to school districts under W.S. 21-15-104. Repayments of advanced entitlements shall be created to a capital reserve account within the earmarked revenue fund which may only be expended upon legislative appropriation. Up to fifteen million dollars ($15,000,000.00) of bond proceeds or forty percent (40%) of revenues under W.S. 9-7-901(a)(viii) not pledged to the repayment of a bond issue may be disbursed to school districts as grants by the

farm loan board following the recommendations of the state superintendent of public instruction. Grants shall only be made to school districts which the superintendent of public instruction finds have a critical need for school facilities, cannot raise sufficient funds and which are using or will use construction entitlements to finance the project unless the construction entitlements are legally committed to another project. The criteria for determining the eligibility of a school district for receiving a grant are:

(h) Not to exceed thirty million dollars ($30,000,000.00) of bond issued under subsection (b) of this section and revenues under W.S. 9-7-901(a)(xi) not pledged to the repayment of a bond issue may be expended for community college capital construction under the provisions of W.S. 39-6-306(b)(iv).

Section 2. W.S. 9-7-903(j) and (k) is repealed.

FILED
JAN 3 1983
ALEXANDER L. STEVAS
CLERK

No. 82-65

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

MARGARET R. BROWN, JUDI KNIGHT, JANE MAXWELL, MARY SHENEFIELD, MARIAN S. STRAUGHAN, SANDRA H. SHUPTRINE, OLIVE J. WHITE,

Appellants,

v.

THYRA THOMSON, as Secretary of the State of Wyoming, et al.

Appellees,

v.

JAMES L. THOMPSON, et al.,

Appellees-Intervenors

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF WYOMING

APPELLEES-INTERVENORS' BRIEF ON THE MERITS

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PARTIES TO THE PROCEEDING

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OPINION BELOW

Brown v. Thomson is reported at 536 F.Supp. 780 (D. Wyo. 1982).

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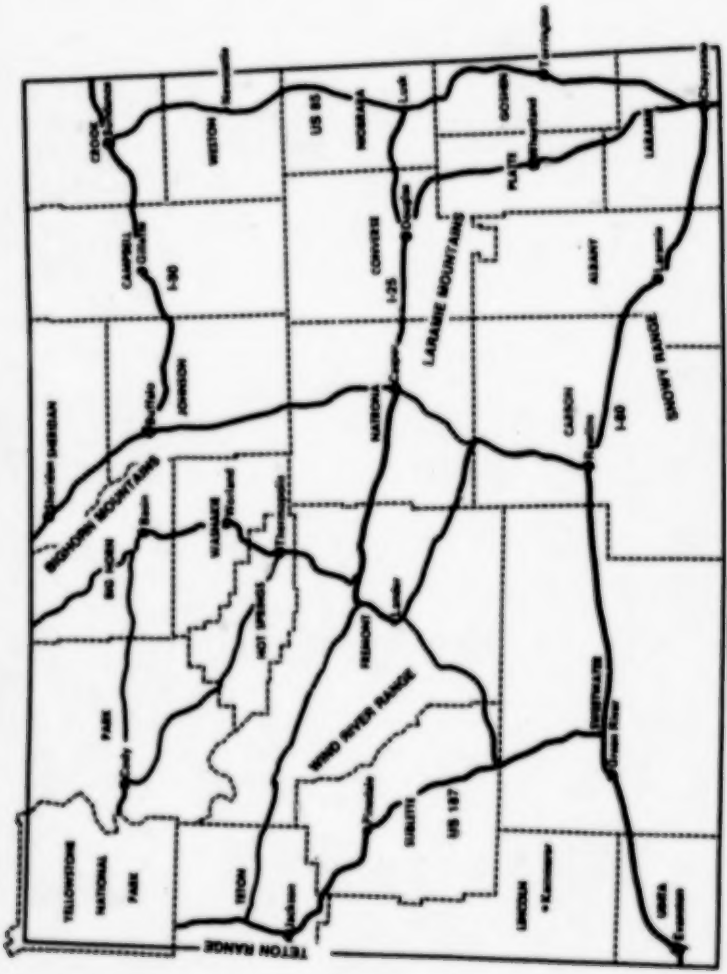
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ADDITIONAL STATUTORY PROVISIONS

Appellees-Intervenors set forth the enabling clause, Chapter 76, Section 3, of the Session Laws of Wyoming which expresses the intention of the Legislature to preserve the representation of Niobrara County:

> It is hereby declared the policy of this state is to preserve the integrity of county boundaries as election districts for the House of Representatives. The Legislature has considered the present population, needs, and other characteristics of each county. The Legislature finds that the needs of each county are unique and the interests of each county must be guaranteed a voice in the Legislature. The Legislature, therefore, will utilize the provisions of Article 3, Section 3 of the Wyoming Constitution as the determining standard in the reapportionment of the Wyoming House of Representatives which guarantees each county at least one representative. The Legislature finds that the opportunity for oppression of the people of this state or any of them is greater if any county is deprived a representative in the Legislature than if each is guaranteed at least one representative. The Legislature finds that the dilution of the power of counties which join together in making these declarations is trivial when weighed against the need to maintain the integrity of county boundaries. The Legislature also finds that it is not practical or necessary to increase the size of the Legislature beyond the provisions of this act in

order to meet its obligations to apportion in accordance with constitutional requirements consistent with this declaration.

STATEMENT OF THE CASE

This case involves the issue of the constitutionality of the 1981 Apportionment Act of the Wyoming State Legislature. The Legislature apportioned the House of Representatives so that all of the 23 counties in Wyoming are guaranteed at least one representative.

Appellants filed their Complaint in October of 1981. They did not challenge the overall apportionment plan but simply the grant of one representative to Niobrara County.

In November of 1981, Appellees-Intervenors, who are residents of Niobrara County, and the Board of County Commissioners of Niobrara County, moved to intervene in this lawsuit. Their Motion was granted in January of 1982.

The trial of this matter was held in Cheyenne, Wyoming, on March 11 and 12,

1982, before a three-judge panel consisting of U.S. District Judges Ewing T. Kerr and Clarence A. Brimmer and Judge William E. Doyle of the U.S. Court of Appeals, 10th Circuit.

The lower Court entered its judgment on April 21, 1982, in favor of Appellees-Intervenors and dismissed Appellant's Complaint with prejudice.

The relief Appellants are seeking is the stripping of Niobrara's sole representative and the combination of Niobrara County and neighboring Goshen County into one representative district.

Appellants' challenge is based on the 89% overall relative range of the 1981 House, a statistic that compares favorably with the 86% figure of the 1971 House and the 90% figure of the 1963 House.

The lower court found that the grant of one representative to Niobrara County does not constitute invidious discrimination and is justified by the legitimate state policy of maintaining the integrity of counties as

political subdivsions through direct representation in the State Legislature.

Judges Kerr, Brimmer and Doyle found that the actual dilution of Appellants' voting power is insignificant while the threat of denial of fair and effective representation for the residents of Niobrara is great. Brown v. Thomson, supra.

SUMMARY OF ARGUMENT

I. The statistical deviation of the 1981 Wyoming House from the theoretically ideal district is insignificant when viewed in the context of the total statistical picture.

a) If Niobrara were to be denied all representation in the State Legislature, the seven counties in which Appellants reside would be the beneficiaries of only a .65% improvement in the percentage of representatives elected, a figure which the lower Court found to be trivial and insufficient to constitute invidious discrimination.

b) If Niobrara County were to be completely stripped of representation in the State Legislature, the 0.0003% to 0.0023% improvement

in Appellants' voting strength would be insignificant, particularly since there is no resulting change in the percentage of population required to elect a majority of the House of Representatives.

II. The 1981 Reapportionment plan advances the rational state policy of preserving the integrity of counties as political subdivisions through fair and effective representation in the State Legislature.

a) Wyoming is unique in terms of its sparsity of population and large geographical area, consisting of 23 distinct counties, each with a separate sense of community.

b) Fair and effective representation in Wyoming is synonymous with personal contact between a legislator and his or her constituents who share interests and concerns peculiar to each county.

c) County government in Wyoming is relied upon to provide essential services while the legislature has the responsibility for distributing various tax monies to the individual counties. Niobrara County's sole representative is an important link between the State

Legislature and county and local government. Niobrara County representatives who live and work in Niobrara County are more committed to their constituents because they share a unique community of interest and allegiance with one another.

d) Niobrara County has a unique identity by virtue of history, tradition and accomplishments. The unnecessary fragmentation of Niobrara County would threaten to undermine the stability of the social, economic and political order that is promoted by effective county-by-county representation.

e) The only people who are threatened with injury in this lawsuit are the 3,000 residents of Niobrara County.

ARGUMENT

I.

THE OVERALL DEVIATION UNDER THE 1981 WYOMING HOUSE APPORTIONMENT IS MINOR AND THE IMPACT ON APPELLANTS IS DE MINIMIS.

The opinions rendered in this case, the principal one by Judge Ewing T. Kerr and the

special concurring one by U.S. Circuit Judge William P. Doyle, say a great deal more than the fact that the 1981 Reapportionment of the Wyoming House of Representatives is not unconstitutional. They say that everyone under the scheme of things as they obtain in the State of Wyoming, is entitled to at least some representation in the Legislature. They say, more importantly, that stripping this one county among Wyoming's 23 counties of its sole representation in the State Legislature, of itself would be depriving the citizens of Niobrara County of their rights.

The trial court recognized that if the 3,000 residents of Niobrara County are combined with the more than 12,000 residence of neighboring Goshen County in one representative district, Niobrara County will be permanently disenfranchised from representation in the State Legislature by one of its own. (Tr. 288). Presumably that is what Judge Doyle means when he says that the Legislature's alternative reduction of the number of members from 64 to 63 and the combining of Niobrara County with

Goshen County is not "an attractive option." Brown v. Thomson supra at p. 788.

Judge Kerr decried the alternative of combining Niobrara and Goshen Counties into one legislative district when he said that, "[W]ithout representation of their own in the State House of Representatives, the people of Niobrara County could well be forgotten." Id. at p. 784.

The seven Appellants reside in seven of the most populous counties in Wyoming, each of which were represented in the 1981 Legislature by at least one, and in most cases, two members of the State Senate. Niobrara County, on the other hand, has not had the good fortune of being represented in the State Senate by a resident of Niobrara County since 1974 as a result of the merging of Niobrara County and the more populous Converse County into one senatorial district. (Tr. 262-264).

In November of 1982, six of the seven Appellants had the privilege of electing at least three, and as many as nine, of their fellow county residents to the 1983 Wyoming House of Representatives. At the same time

Appellants were electing their multiple representatives to the Wyoming Legislature, Niobrara County was busy choosing its sole voice in the 1983 Wyoming Legislature, a process that has occurred uninterrupted in Niobrara County since its creation in 1911. (Intervening Defendants' Exhibit SS; Tr. 232-233). Yet, Appellants come to this Court asking that the 3,000 residents of Niobrara County be completely stripped of representation in the Wyoming Legislature so that Appellants voting strength can be improved from 0.0003 in Teton County to 0.0023 in Laramie County. (Defendants' Exhibit A-604; Tr. 94-95, 124). "Such minor improvement" Judge Kerr wrote, "hardly reaches the level of significance." Id. at p. 783.

-ONE STATISTIC-

Appellants put all of their eggs in one basket: The "overall relative range" percentage. (Appellants' Brief, pp. 14-15, 17). The overall relative range, which is 89% in this case, represents the percentage deviation from a theoretically ideal district between the most over represented county and the most under represented county. The two counties represent

the extremes of deviation from the ideal districting and all other counties fall between those borders.

The "official divisor" under the 1981 Apportionment is 7,300. The official divisor refers to the number of votes per representative in the theoretical ideal district. Under the 1980 census, Niobrara is the most over represented county with its population comprising 40% of the theoretical ideal district, while Washakie is the most under represented county with its population comprising 129% of the theoretical ideal district.

Appellants recite the 89% overall relative range figure in this case as if it were a magic wand that Judges Kerr, Brimmer and Doyle somehow lost in a mad shuffle of case law. On the contrary, the lower Court was well aware of the 89% overall relative range statistic. It refused, however, to evaluate Appellants single statistic in a vacuum:

> Initially, the 89% relative range figure would appear to conclusively establish a prima facie case and possibly invidious discrimination in the 1981 reapportionment law. A close examination of the other

> relevant statistics, however, soon reveals the fallacy of relying upon only one statistic. Utilizing only the overall relative range figure distorts the picture.

Id. at p. 782.

The seven counties in which Appellants reside elect 28 out of 64 representatives or 43.75% under the 1981 plan. Comparatively, if Niobrara County is denied its own representative, the seven counties in which Appellants reside, which contain 46.3% of the total state population, would elect 28 out of 63 representatives or 44.4% of the House. (Joint Appendix Ex., Vol. 1, p. 19, 21; Defendants' Exhibit A-313, A-315; Tr. 60, 69-70). The Court found that the resulting .65% improvement in the percentage of representatives elected "is trivial but, more importantly, such a percentage is insufficient to constitute invidious discrimination. Rather, the effect on Plaintiffs is best described as de minimis." Id. at p. 783.

The lower Court observed that this is not a case where a small percentage of the population is able to elect a disproportionally

large number of representatives. Id. Under the 1981 plan, 46.65% of the population would elect 33 of 64 representatives. Combining Niobrara with Goshen County in one district would make no change in the percentage of population required to elect a majority of the House of Representatives. Thirty-two of 63 seats would be elected by the same 46.65% of the population under the combined district plan urged by Appellants.

-PRIOR SUMMARY AFFIRMANCE-

Judges Kerr, Brimmer and Doyle put stock in the similarity between the House apportionment in this case and the House apportionment plan before the Court in 1966 in Harrison v. Schaefer, 383 U.S. 269, 86 S.Ct. 929, 15 L.Ed.2d 750 (1966). In Harrison, this Court summarily affirmed the decision authored by Judge Kerr in Schaefer v. Thomson, 251 F.Supp. 450 (D.Wyo. 1965). In Schaefer, the 1963 reapportionment of the Wyoming House of Representatives was found not to be invidiously discriminatory. The 1963 plan provided for 61 representatives. The State of Wyoming had a total population of 329,646. Niobrara County,

with a population of 3,750, had one representative. The official divisor was 5400 people. Four counties fell below the official divisor but each retained its own representative.

Under the 1981 Reapportionment Act, the population of the State of Wyoming was 469,557. The number of representatives was increased to 64. Five counties, including Niobrara County, fell below the official divisor of 7300 and each was given one representative.

The overall relative range of the 1963 House apportionment was 90% as opposed to the overall relative range of 89% in the instant case. The Lower Court concluded that the overall changes between the 1963 House plan, the constitutionality of which was summarily affirmed by this Court, and the 1981 House plan, "have not been of sufficient magnitude to constitute invidious discrimination." Brown v. Thomson, supra at p. 783.

-MATHEMATICAL EXACTNESS NOT REQUIRED-

This Court held that the one-man, one-vote principle enunciated in Baker v. Carr, 369 U.S. 186 (1962) is not meant to be so inflexible as to turn its back on political fairness and the

institutional integrity of legislative bodies in favor of a cold mathematical idealism. Mahan v. Howell, 410 U.S. 315 (1973); Gaffney v. Cummings, 412 U.S. 735 (1973).

Because of the closer relationship between local and state governments, greater flexibility is to be accorded to state as opposed to Congressional reapportionment plans. Reynolds v. Sims, 377 U.S. 533 (1964); Mahan v. Howell, supra at 321.

Recognizing that apportionment cases differ on their facts, this Court has refused to set the kind of arbitrary mathematical standard that would unfairly handcuff a state legislature in a unique case:

> Neither Courts nor legislatures are furnished any specialized calipers that enable them to extract from the general language of the Equal Protection Clause of the Fourteenth Amendment the mathematical formula that establishes what range or percentage deviations is permissible, and what is not.

Mahan v. Howell, supra at 329.

In Gaffney v. Cummings, supra at 749, this Court made it plain that reapportionment plans

are not to be stricken automatically because of a large deviation:

> Fair and effective representation may be destroyed by gross population variances among districts, but it apparent that such representation does not depend solely on mathematical equality among district populations. There are other relevant factors to be taken into account and other important interests that states may legitimately be mindful of. See, Mahan v. Howell, supra; Abate v. Mundt, 403 U.S. 182 (1971); Dusch v. Davis, 387 U.S. 112 (1967); Sailors v. Board of Education, 387 U.S. 105 (1967); Burns v. Richardson, supra. An unrealistic overemphasis on raw population figures, a mere nose count in the districts, may submerge these other considerations and itself furnish a ready tool for ignoring factors that in day-to-day operation are important to an acceptable representation and apportionment arrangement. [emphasis added].

This Court has clearly stated that although a state reapportionment plan must consider population figures, a deviation of more than 10% may be justified by a showing of a legitimate state interest or policy that is advanced by the apportionment plan. White v. Regester, 412 U.S. 755 (1973); Mahan v. Howell, supra; Gaffney v. Cummings, supra.

In this unique case, the State of Wyoming and Niobrara County articulated, by a wealth of uncontroverted evidence, the existence of a legitimate state policy which is advanced by the 1981 House apportionment plan.

II.

THE 1981 REAPPORTIONMENT PLAN PROMOTES THE LEGITIMATE STATE POLICY OF MAINTAINING THE INTEGRITY OF COUNTIES AS POLITICAL SUBDIVISIONS THROUGH DIRECT REPRESENTATION IN THE STATE LEGISLATURE.

Appellants say there is no legitimate state interest or rational state policy in preserving the integrity of Niobrara County as a separate and independent political subdivision through representation in the State Legislature by one of its own. (Appellants' Brief, pp. 17-20).

Appellants dismiss as "irrelevant historical data" the voluminous evidence in the record concerning the uniqueness of the County of Niobrara and the State as a whole. They object to testimony describing the relationship between the various levels of state and county government which administer to each county's

peculiar social, political and economic needs on a grass roots-home rule basis.

After reading Appellants' conclusory statements denying the existence of a legitimate state policy in this case, Appellees-Intervenors wonder how long Appellants have actually resided in Wyoming and how involved they are in the free political process. The truth in this instance is that the preservation of direct representation of each county in the Legislature is the very glue that keeps the system running and running well in Wyoming.

This Court has already held that the policy of maintaining the integrity of counties as political subdivisions in the process of reapportioning the State Legislature is a rational state interest. Mahan v. Howell, supra.

In Mahan, the Virginia Assembly's apportionment plan had a 16.4% statistical deviation while keeping intact counties as political boundaries. Writing for the majority, Justice Rehnquist held that the apportionment reasonably advanced the rational state policy of

respecting the boundaries of political subdivisions without sacrificing substantial equality:

> We conclude, therefore, that the constitutionality of Virginia's legislative redistricting plan was not to be judged by the more stringent standards that Kirkpatrick and Wells make applicable to congressional reapportionment, but instead by the equal protection test enunciated in Reynolds v. Sims, supra. We affirm its holding that "the Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable." 377 U.S. at 577. We likewise reaffirm its conclusions that "[s]o long as the divergences from a strict population standard are based on legitimate considerations incident to the effectuation of a rational state policy, some deviations from the equal population principle are constitutionally permissible with respect to the apportionment of seats in either or both of the two houses of a bicameral state legislature." Id. at 579.
>
> The policy of maintaining the integrity of political subdivision lines in the process of reapportioning a state legislature, the policy consistently advanced by Virginia as a justification for disparities in population among districts that elect members to the House of Delegates, is a rational one. It can reasonably be

> said, upon examination of the legislative plan, that it does in fact advance that policy.

Appellants dismiss the precedent of Mahan by noting that Wyoming's Legislature, unlike Virginia's, is not authorized to enact local legislation. Presumably Appellants are arguing that the public benefit of preserving the integrity of counties as political subdivisions is limited to states which authorize local legislation. On the contrary, the benefits which flow from the preservation of the direct representation of each and every county in Wyoming are no less worthy then those which inure to the State of Virginia.

In a state where cattle and sheep are more numerous than people, where neighbors are more often than not separated by great distances, where the social, political and economic character of one county is different from that of an adjoining county, it is important that the voters elect a representative who shares a community of interests with his constituents. The election of a man or woman from within the ranks of each county is the most effective way in Wyoming to maintain the link between the

various levels of state and local government and to promote political accountability on behalf of each county.

Wyoming is unique in that personal contact between representatives and their constituents is still the hallmark of political life in this sparsely populated but large geographic state.

Effective representation in Niobrara County, as in most of the counties in Wyoming, means that your state legislator is your neighbor and usually your friend; he or she drives the same isolated pot-hole filled roads; sends his or her children to the same public schools; attends the same weddings and funerals; sells and buys sheep and cattle at the same auction; screams at the referees at the same high school football games; shops at the same stores; curses the same snow storm in May; and generally speculates whether life really might be more agreeable in Arizona.

This perceived community of interest is the stuff Niobrara County is made from. But the 2,613 square miles of rolling prairie and rich grasslands that became Niobrara County had

an identity of its own long before formal county creation in May of 1911.

-NIOBRARA'S UNIQUE AND SEPARATE CHARACTER-

The town of Lusk, Wyoming, the present day county seat, "has long been at the crossroads of transcontinental trails." (Joint Appendix Ex., Vol. II, Historical Encyclopedia of Wyoming, p. 33; Tr. 210, 232-233). Prospectors gamblers, promotors, hijackers and adventurers, including such notables as Calamity Jane and Wild Bill Hickock, used Lusk as a regular way station on their way to the gold mines of Deadwood, South Dakota. (Joint Appendix Ex. Vol. II, Historical Encyclopedia of Wyoming, p. 34, Tr. 210, 232-233).

The butte rock north of Lusk still shows the deep ruts of the stagecoaches that shuffled gold bricks, freight goods and cowboys to the Cheyenne railroad. Guards rode shotgun on the boot of coaches drawn by fast tandem teams of six horses. George Lathrop, one of the last of the Old West stagecoach drivers, is buried two miles west of Lusk. His stagecoach sits in the Lusk Museum. (Joint Appendix Ex., Vol. II, p. 34; Tr. 210, 232-233).

In 1883, Russell Thorp, Sr., bought the Cheyenne and Black Hills Mail and Express Company, a famous stageline and made Rawhide Station, located near Lusk, his headquarters. Stations for changing horses were located every 18 miles on a trail that runs along the Rawhide Buttes, a striking landmark that rises out of the prairie south of Lusk. (Joint Appendix Ex., Vol. II, Historical Encyclopedia of Wyoming, p. 33-34, Tr. 210, 232-233).

In the fall of 1893, the Johnson County Range War spilled into the Lusk area when a young man was shot out of the saddle on the Horseshoe Ranch. Charlie Hitshew was cleaning a meadow when he heard a shot and found a riderless horse running in circles near the sprawled out body of Dudley Champion, the last man killed in the famous range war. The killer, Mike Shonsey, wasted no time in fleeing to Mexico after being released by the Lusk Sheriff and "a hastily called court." (Joint Appendix Ex., Vol. II, Historical Encyclopedia of Wyoming, p. 35-36, Tr. 210, 232-233).

In the years following the Civil War, cowboys moved huge herds of longhorns north from

Texas to railroad centers and pastures along the Texas Trail which ran through Lusk. When the Fremont, Elkhorn and Missouri Valley Railroad arrived in Lusk on July 13, 1886, the 300 mile round trips to Cheyenne by horse and buggy for beans, flour and other necessities of life stopped and the town became a major railhead for cattle shipping to the eastern markets. (Tr. 214; Joint Appendix Ex., Vol. III, p. 34-35; Lusk Herald, February 18, 1887 issue; Historical Encyclopedia of Wyoming, Tr. 210, 232-233).

As the February 18, 1887 issue of the Lusk Herald, the oldest weekly newspaper in Wyoming, unabashedly proclaims, 40,000 head of cattle were shipped out of Lusk, "[T]he Greatest Stock Shipping Point in the West." (Joint Appendix Ex., Vol. III, p. 3).

-NIOBRARA COUNTY CREATED-

In the years following Wyoming's grant of statehood in 1890, the residents of eastern Converse County, the so-called "east-enders," objected to inclusion in Converse County. The population of eastern Converse County was far more sparse than that of the western part of

the County, which housed the county seat in Douglas, Wyoming.

The east-enders believed that they were the unfortunate recipients of higher taxes, poor roads, inadequate public services and too distant and unresponsive county government (Tr. 215-216, 223, 233; Joint Appendix Ex., Vol. II, p. 6, 9-14, Lusk Herald, June 2, 1910 and April 27, 1911 issues).

After the east-enders waged a vigorous campaign to divide Converse County, the present day Niobrara County was created in the spring of 1911 by an overwhelming 6 to 1 special referendum vote. (Tr. 220-222).

Curiously, the 1910-1911 issues of the Lusk Herald which urged the creation of Niobrara County read as if they rolled off the press the day after Appellants filed this lawsuit:

> Government representation of our own. Instead of voting to elect officers residing in Douglas and the west end to look after our affairs, we will be in a position to elect our own representatives who understand and are interested in our welfare and not that of Douglas. (emphasis added).

(Joint Appendix Ex., Vol. II, p. 10, Lusk Herald, April 27, 1911 issue; Tr. 213, 232-233).

> Each individual is a co-partner in the business about to be set up and each one should therefore take a keen personal interest in the carrying out of the plans of the co-partnership.

(Intervenors' Ex. JJ, Lusk Herald, April 20, 1911 issue; Tr. 221, 232-233).

"East-enders are not asking for anything more than they are entitled." (Joint Appendix Ex., Vol. II, p. 8, Lusk Herald, January 5, 1911 issue; Tr. 213, 232-233).

-NIOBRARA PROSPERED-

In the years following its creation, Niobrara County prospered as a prime cattle and sheep producing area:

> As a grazing county, Niobrara in years gone by had a reputation not only statewide but which reached far beyond its confines and Lusk was the principle shipping point for the great herds which were annually shipped west. A transition has come and although the open range has been curtailed, there will always be leasable land for grazing purposes and more cattle will be fed than formerly so it is wise to conclude that the chief industries of county will still be prosecuted. These are cattle and horse grazing and mutton growing. . . .

(Joint Appendix Ex., Vol. II, p. 15-17, Lusk Herald, September 7, 1911 issue; Tr. 225-226, 232-233).

In 1917 and 1918, Union Oil Company of California and Ohio Oil Company turned the pasture land around Lance Creek in Niobrara into what became known as the Lance Creek Oil Boom. After test wells at Cow Gulch panned out in 1917, rotary drills, casing, pipe, rigs and machinery were unloaded in Lusk and moved to the oil fields by horse and truck. In four days, 555 tons of freight were moved through Lusk alone. Within a year, 25 rigs were operating, a refinery was built and pipe laid to the railroad. By the 1930's and 1940's, Niobrara's Lance Creek Field was first in oil production in Wyoming. (Joint Appendix Ex., Vol. II, p. 36, Historical Encyclopedia of Wyoming; Tr. 210, 232-233, 238-239).

As a result of Niobrara's oil boom and budding cattle and sheep growing industries, Niobrara county experienced a large population growth in the first quarter of the century. The population of Lusk alone swelled from 434 in 1915 to 2,092 by 1920. (Tr. 238-239).

Niobrara's prosperity continued throughout the decades after its creation until the flow of oil and gas tapered off in the 1950's and 1960's and the cattle and sheep industry fell on some hard times. Niobrara's population stabilized during this recent period and it was forced to bite the bullet while much of the State was awash in mineral resource-related economic prosperity and growth.

-EFFECTIVE REPRESENTATION-

During the early growth and development of the county, Niobrarans were particularly concerned that their common interests be fairly and adequately represented. The following excerpt from the June 2, 1910 issue of the Lusk Herald shows that Niobrarans have always recognized the value of being represented by men or women chosen from their own ranks:

> One important item of legislation, and one only, concerns us next winter, and that is the equitable division of Converse County. To further this laudable purpose, we must send a man from this end of the county who has had experience in dealings with men; a man who is a "mixer"; a man who understands the ins and outs of politics; a man who is not easily discouraged; a man who cannot be bribed or swerved from his

> purpose; in short, a man who will have in mind his constituents and their desires "first, last and all the time." What man is there to fill the bill?

(Joint Appendix Ex., Vol. III, p. 6, Lusk Herald, June 2, 1910 issue; Tr. 213, 232-233).

Today while Niobrara County suffers through a prolonged economic downturn, Niobrarans look to their elected representative as the "mixer" who must be counted on to protect their interests.

In practice, Niobrara County's representative acts as the conduit between the Mayor and City Council, the Board of County Commissioners and the various committees of the State Legislature, particularly the Appropriations Committee. (Tr. 276-277, 304-305, 308, 316). This link is especially important in light of the responsibility of the State Legislature for distributing tax monies, including mineral severance and educational foundation revenues, to the individual counties. By the same token, the Board of County Commissioners is charged with the responsibility for allocating available revenue on the local level. (Tr. 310-313).

The Chairman of the Board of County Commissioners of Niobrara County, Kenneth Freeman, whose family first homesteaded in Niobrara County in 1910, explained the nature of the relationship between the Commissioners and the elected representative from Niobrara County:

> Q. In your capacity as Chairman of the County Commissioners, have you had occasions to work with members of Niobrara County's legislative delegation?
>
> A. We worked together always. Les Zumbrunnen was still serving his last term in my first term and we worked together.
>
> Q. What was he in, the House?
>
> A. Les Zumbrunnen was in the House of Representatives and I worked with him. Ken Gropp was elected. You know, the minute the session starts our representative is committed to memory because we talk every day. And Ken Gropp would call me as high as every day to check on specific legislation, and what we thought. So much of the legislation passed by the Legislature and submitted to the Legislature, a lot of people don't check to see what it does to a small county. When it comes to, like mandatory, full-time county attorneys or funding of indigent counsel for indigent people that can't afford their own defense. The Legislature

is very handy in giving but they forget to ask us if we can pay for it. That is why to me it is vitally important to have adequate access to my representative.

Q. Do you know Russ Thompson personally?

A. Absolutely, he ranches about 12 miles northeast of me. I have known him all my life.

Q. Ken Gropp?

A. He's about 10 miles south.

Q. Andy McMaster?

A. All my life.

Q. Does it make any difference in your performance of your duty as County Commissioner that you know these people in a personal way?

A. You bet it does. Russ Thompson has to drive on some of the roads we can't afford to fix, and then when I talk to him in the Legislature, he'll listen.

Q. Are the interests of your constituency in Niobrara County different from the interests of residents of other counties?

A. . . . . to me the vital part is that the constituency that elects me also elects my representative. Consequently, if he is not doing the job, I can let them know. If he is from another county, a Board of Commissioners in my county has no control over the Board of Commissioners in another county. So that is why to

> me it is so important that the constituents that elect me and fellow board members also elect our representative. Then we are responsible to the same people.

(Tr. 313-315).

Other witnesses, including former Niobrara State Senator and Representative James Thompson, former Niobrara legislators Ken Gropp and Russ Thompson and former editor and publisher of the Lusk Herald Gerald Bardo, testified at length to the hitherto unseverable connection in Wyoming between effective representation and representation by one of their own. Their testimony focused on the personal relationship and allegiance of Niobrara County representatives with their constituents, their familiarity with the problems that are peculiar to Niobrara County and the accessibility to a representative who resides in Niobrara County, not Goshen County 60 miles away. (Tr. 262-266, 276, 282-283, 287-288, 304-305, 309-310, 319-320, 325-326).

Mr. Bardo, speaking from the experience of 60 years as a newspaper man, 40 of those in Lusk, Wyoming, testified to the essence of the

unique personal scheme of legislative representation in Wyoming:

> Q. Describe briefly your roll, your function, within the community, within the County of Niobrara as former editor and publisher of the Lusk Herald.
>
> A. Well, you can't be in the newspaper business without being in the middle of everything, including the controversy as well as its joys and its sorrows.
>
> Q. Now do you have a personal relationship with the former and present legislators from Niobrara County that have been discussed in this hearing?
>
> A. That is always imperative, of course. But it's probably more particularly true in a state like Wyoming where you are so closely involved with them. They are your friends, you know them personally. I'm sure they feel a responsibility through the newspaper to the people.
>
> Q. What kind of access have you traditionally had with your legislators? Good ones? Bad ones? Has it been difficult?
>
> A. . . .they are your close personal friends and one of the first places they come as well as all the politicians is to the newspaper office, and they are that close and as close as the telephone always.

Appellees-Intervenors' witnesses testified in detail to the instrumental role that

Niobrara County legislators have played in furnishing special assistance directly to Niobrara County and Lusk, Wyoming, through intense lobbying or enactment and defeat of legislation. For example, in the early 1950's, the Niobrara delegation in the Legislature was successful in their efforts to defeat a bill adverse to Niobrara County which would have ratified the Cheyenne River Compact between Wyoming and South Dakota; passage of the so-called "Lusk Bill" in 1971 which reduced the population requirement for the gas tax refund and resulted in a refund to monies to the Town of Lusk; the location of the new Women's Correctional Center in Lusk; and emergency assistance to Niobrara ranchers in the 1949, 1954, 1955, and 1977 blizzards. (Tr. 247-248, 274-278, 304-305, 308-309, 317, 328-231).

This important connection between effective representation and the preservation of the integrity of the counties as political subdivisions through apportionment has been noted by several lower courts. Carstens v. Lamm, 543 F.Supp. 68 (D.C. Colo. 1982); Dunnell v. Austin, 344 F.Supp. 210 (E.D. Mich. 1972);

Skolnick v. State Electoral Board of Illinois, 336 F.Supp 839 (1971); Maryland Citizens Committee for Fair Congressional Redistricting, Inc. v. Tawes, 253 F.Supp 731, aff'd. sub. nom., Alton v. Tawes, 384 U.S. 315 (1966).

In Carstens, District Judge Finesilver wrote that county boundaries "should remain undivided whenever possible because the sense of community derived from established governmental units tends to foster effective representation." Carstens v. Lamm, supra at p.88. After noting that unnecessary fragmentation of county units undermines the ability of constituencies to organize effectively, Judge Finesilver stated that: "[A]s a general rule, county lines are more meaningful in sparsely populated areas because the residents rely on the county government to provide all necessary services." Id.

-LOWER COURT FINDS UNIQUENESS AND LEGITIMATE STATE POLICY-

The lower court expounded at length on the establishment by the State of Wyoming and Niobrara County of a rational policy

basis which justifies the statistical deviations under the 1981 reapportionment law:

> Wyoming as a state is unique among her sister states. A small population is encompassed by a large area. Counties have always been a major form of government in the state. Each county has its own special economic and social needs. The needs of the people are different and distinctive. Given the fact that the representatives from the combined counties of Niobrara and Goshen would probably come from the larger county, i.e. Goshen, the interests of the people of Niobrara County would be virtually unprotected.
>
> The people within each county have many interests in common such as public facilities, government administration, and work and personal problems. Under the facts of this action, to deny these people their own representative borders on abridging their right to be represented in the determination of their futures.
>
> In Wyoming, the counties are the primary administrative agencies of the state government. It has historically been the policy of the state that counties remain in this position.
>
> The taxing powers of counties are limited by the Constitution and some state statutes. Supplemental monies are distributed to the counties in accordance with the appropriations designated by the State Legislature. It comes as no surprise that the financial requirements of each county

> are different. Without representation of their own in the State House of Representatives, the people of Niobrara County could well be forgotten.

Brown v. Thomson, supra at p. 784.

Judge Doyle also alluded to the uniqueness of the representative scheme in Wyoming when he concluded in his special concurrence that preservation of the integrity of each county as a political subdivision through representation in the State Legislature is part and parcel of fair and effective representation in Wyoming:

> Wyoming has good reasons for clinging to the county as a representative district because this insures that the peculiar needs of each and every county can be represented in the Legislature. Although this might not carry out fully the equality of numbers of voters within the various election districts, it comes close enough to be roughly fair.

Id. at p. 786.

-APPELLANTS ACKNOWLEDGE UNIQUENESS-

Appellants themselves acknowledged the uniqueness and suitability of Wyoming's county-by-county apportionment scheme when their star witness, Wyoming State Legislator Charles Scott, testified, perhaps inadvertently, as follows:

THE WITNESS: I think Wyoming is quite unique in its geography, and circumstances in the point I was trying to make -

JUDGE DOYLE: In other ways, too?

THE WITNESS: I think also unique in having a set of counties that are real communities and where the county lines don't divide any communities that I know of. Although you do have counties that have more than one community in them. And we are, to the best of my knowledge, and its not perfect, we are unique in adhering to county lines in terms of our legislative districts.

JUDGE DOYLE: Then Wyoming lends itself to the county as a unit perhaps better than any other state would?

THE WITNESS: To the best of my knowledge to the extent I have knowledge of other state, yes, that is correct.

(Joint Appendix Ex., Vol. I, pp. 65-66; Tr. 387, 394).

THE WITNESS: . . .The system they use in other states is a good deal more difficult to use than the county system we have here in Wyoming. As I said at the outset, I would point out to the best of my knowledge none of them have the circumstances either geographically or --

(Joint Appendix Ex., Vol. I, p. 67; Tr. 397).

Mr. Scott, one of ten representatives from populous Natrona County and the prime mover in

an unsuccessful attempt in the 1981 Legislature to strip Niobrara of its one representative (Tr. 360-372), is the same person Appellants relied on as their primary rebuttal witness. In his rebuttal testimony, Mr. Scott admitted that the courts are not limited to a consideration of the overall relative range statistic only:

> JUDGE DOYLE: We are not limited to these ratios, that isn't in the Constitution?
>
> THE WITNESS: No sir, it clearly isn't.

(Joint Appendix, Volume I, p. 66; Tr. 395).

Mr. Scott also admitted, albeit somewhat painfully, that when all things are considered, the 64 member plan does not significantly deviate from the 63 member plan which Appellants are urging:

> JUDGE KERR: One legislator out of 64. That doesn't make a lot of difference, does it?
>
> THE WITNESS: It doesn't change the average deviation too much although it does change it. (emphasis added).

(Joint Appendix, Volume I, p. 66; Tr. 395).

-SIMILARITY OF O'SHIELD V. McNAIR-

Mr. Scott's admissions as to the suitability and appropriateness of the county-by-county legislative scheme are consistent with Judge Clement Haynsworth's analysis in O'Shield v. McNair, 254 F.Supp. 708 (D. S.Car. 1966).

O'Shield involved a provision in the South Carolina apportionment plan guaranteeing at least one representative to each of 46 counties. If all the 124 representatives in South Carolina were apportioned on a strict mathematical basis, the smallest county would not be entitled to a representative. Id.

The Court held that since the requirement of one representative for each county affected the present apportionment of only one out of 124 representatives, the dilution of voting power was minimal. Id. In upholding the constitutionality of South Carolina's county-by-county legislative scheme, the Court relied upon the "strong community of interest" in each county, the close correlation between population and representation among all counties when considered in their natural groupings and the fact that in practice the

legislative authority in county affairs is exercised by the county delegation in the state legislature:

> . . .there is a substantial disparity between the smallest county entitled to one Representative and the largest county entitled to only one but which comes close to the line which divides the one Representative counties from the two Representative counties.
>
> * * *
>
> The result of this is that 19 of the 46 counties vary from the population norm by more than 15%. In some instances, the variance is only slightly in excess of 15%. In other instances, it is substantially greater.
>
> * * *
>
> In light of the close correlation between population and representation among all the counties when considered in their natural groupings, we now turn to the question of whether the disparities among individual smaller counties are justified by the state's interest in utilizing the counties as voting districts.
>
> * * *
>
> In South Carolina, the counties are major political subdivisions of the state. They levy and assess taxes, build and maintain those roads which are not incorporated into the national or state highway systems, and supply a multitude of other services to their residents, and to other subdivisions such as school districts.

Each county has a clerk of court, an office for the registration of mesne conveyances, a probate court, a treasurer, an auditor, a sheriff, a supervisor, and other administrative officials. They are selected by popular elections in the counties. Within each county, there is a strong and clearly recognized community of interest, which does not cross county lines.

* * *

There has been no general delegation of legislative authority to the counties. With the exception of a few counties, the legislative authority in county affairs is still vested in the General Assembly. In practice, it is exercised by the county delegation in the General Assembly. When a particular county delegation reaches a conclusion on a county legislative matter, "local" bills are introduced in the General Assembly which are routinely passed in both houses without scrutiny by other members of the General Assemby. Practically, the county's delegation in the General Assembly is its legislative body.

. . .By virtue of the reapportionment of the Senate now being effected, many counties will be left without representation in that body. If such a county were also now left without representation in the House of Representatives, the existing system would break down. From the plaintiff's point of view, if this resulted in an earlier creation of county councils, it is a consequence to be desired, but we think the General Assembly is entitled to determine what, in its opinion, is the

> most desirable method of handling the legislative affairs of the counties. Until some other method is adopted, consideration of the need of individual counties for representation in the House of Representatives is not impermissible.
>
> * * *
>
> Our decision, however, does not turn upon the legislative need of county representation in the House of Representatives, for we think there are other factors which give each county such a strong community of interest as to justify the treatment of each as a separate election district, so long as the disparities between individual counties are not greater or more numerous than they are and so long as a comparison of population and representation for every reasonable grouping of counties shows the close correlation which is now present. emphasis added.

Id. at pp. 716-720.

-PUBLIC BENEFITS-

The important public benefits that Wyoming's unique brand of personal county by county representation confers include the preservation and stabilization of the social, economic and political order, guaranteed in large measure by the exercise of a meaningful voice in the State House.

Proof of the effectiveness of Wyoming's county by county apportionment scheme is apparent in the unusually great number of contributions Niobrara County residents have made to the State through the enactment of legislation and achievements in the fields of medicine, law, government service, agriculture, education and many more.

Niobrara County has been the source of a variety of legislation which has benefited the State as a whole. Such legislation, which was sponsored and managed through both Houses of the State Legislature by representatives from Niobrara County, includes the 1965 repeal of the statutes prohibiting interracial marriages and the 1969 enactment of legislation eliminating architectural barriers for the handicapped in public buildings. (Tr. 245-247).

A variety of legislation that has benefitted the agricultural sector in Wyoming has also originated in Niobrara County. This legislation includes the reimbursement from mineral operators to ranchers and farmers for damages caused by contamination of stock water wells, the preservation of the brucellosis-free

certification system, the first program to treat the leafy spurge weed problem in Wyoming, and the increase of the allowable width of trucks used to haul hay bales in Wyoming. (Tr. 249-253, 306-307, 317-319).

Niobrara County has made substantial contributions to the educational system in Wyoming, including the creation of the first unified county school district in the State in 1949 and the establishment of the Teachers Retirement System. (Tr. 327-328).

Niobrara County has made substantial contributions of state and national leaders including a U.S. Representative, Governor and U.S. Senator, two State Treasurers, a State Auditor, a State Land Commissioner, a State Examiner and a Secretary of State. (Tr. 343-345).

The County has also provided numerous members of state and national boards and commissions including trustees and Board President of the University of Wyoming, commissioners and Chairman of the Highway Commission, Game and Fish Commission, Recreation Commission, delegates to the White House Conference on

Education and Aging and many more. (Appellees-Interventors' Ex. VV; Tr. 336-340).

In the field of law, Niobrara County has contributed to the Federal and State Judiciary and legal system with two State Attorneys General, a U.S. Circuit Court Judge, a State District Court Trial Judge, and numerous attorneys. (Tr. 346).

In the field of medicine, Niobrara County has made contributions far disproportionate to its small population in producing 18 practicing physicians since 1945. (Appellees-Intervenors' Ex. WW; Tr. 340-342).

The life and vitality of Niobrara County that has been so instrumental in encouraging its residents to be participants is unquestionably linked to its political franchise in the State Legislature. Judge Doyle observed as much when he stated during the trial that "it's undesirable to [break up the counties] because I think that there is a natural unity within a county. . . ." (Tr. 139).

-OTHER U.S. SUPREME COURT DECISIONS DISTINGUISHED-

This Court has found the presence of invidious discrimination in several cases where the statistical variances were large and a showing of acceptable state policy was absent. Connor v. Finch, 431 U.S. 407 (1977); Whitcomb v. Chavis, 403 U.S. 124 (1971); Swann v. Adams, 385 U.S. 440 (1967); Kilgarlin v. Hill, 386 U.S. 120 (1967); Roman v. Sincock, 377 U.S. 695 (1964); Reynolds v. Simms, 377 U.S. 533 (1964). However, as Judge Doyle noted in his special concurrence, none of the above cases involved unique elements or the situation of a single county which has received a benefit, as here. Judge Doyle observed that each of the cited cases that were stricken involved widespread "across the board" differences, a situation that is missing here. Brown v. Thomson, supra at pp. 787-788.

In Connor, this Court struck a federal district court's legislative apportionment plan for Mississippi on the ground that the plan violated the Fourteenth Amendment requirement that districts be as nearly of equal population as practicable. Id.

The apportionment plan in Connor was based in part on a deference to Mississippi's historic respect for the integrity of county boundaries. This Court held that a deviation from approximate population equality can be justified by "enunciation of historically significant state policy or unique features," but that Mississippi failed to identify any such unique features of the Mississippi political structure. Id. at pp. 417, 420.

After identifying the unique features of Wyoming's political structure in terms of population and geography and the relationship between each county and the state as a whole, Judge Doyle speculated that the result in Connor "might very well have been different had Mississippi taken pains to call attention to the unique features in the political structure sufficient to justify more than de minimus variations." Brown v. Thomson, supra at p.788.

It is worth noting that this Court paid lipservice in Connor to respect for state legislative judgments and the less stringent standard of review to be applied in state reapportionment cases:

> . . .a state legislature is the institution that is by far the best situated to identify and then reconcile traditional state policies within the constitutionally mandated framework of substantial population equality.
>
> . . .The latitude in Court-ordered plans for departure from the Reynolds standards in order to maintain county lines is considerably narrower than that accorded apportionment devised by state legislatures, and that burden of articulating special reasons for following such a policy in the face of substantial population inequality is correspondingly higher. (emphasis added).

Id. at p. 414, pp. 419-420.

-CHARACTER OF DEVIATION-

In evaluating a legislative apportionment scheme, careful scrutiny should be given to the character as well as the degree of deviation from strict mathematical equality. Long v. Avery, 251 F.Supp. 541, 551 (D.Kan. 1966).

In the context of the civil rights movement of the 1960's, the adoption of a narrow and exact mathematical standard was an effective tool to discourage racially-motivated malapportionment. However, Appellees- Intervenors submit that the one-man, one-vote principle was never conceived with the idea that it could be

used to dismantle a unique representative system that is as fair and effective as any in this country.

The deviation in this case is a necessary side effect in assuring meaningful representation to all of the citizens of Wyoming. The only people who can suffer any injury are the 3,000 residents of Niobrara County:

> This brings us back to the present case and the disproportion in a single district. Is it injurious to the remainder of the population of Wyoming? No discomfort is apparent as a result of giving the people of Niobrara County the sorely needed representation. It finally is to be noted and concluded that there is not the slightest sign of any group of people being discriminated against here.

Brown v. Thomson, supra at p. 788.

CONCLUSION

Niobrara County, which comes by its name from the Pawnee Indian words "Ni" for water and "obthatha" for spreading (i.e., the spreading water of the Niobrara River), is a unique and distinct community of history, tradition and accomplishment.

The Historical Encyclopedia of Wyoming describes the people of Niobrara County in these terms:

> The relative isolation characteristic of the area has proven to be its strength, for it forces its people into resourcefulness, producing a vigorous, individualistic, yeasty breed of participants rather than spectators.

(Joint Appendix Ex., Vol. II, p. 38; Tr. 285-286).

Appellees-Intervenors do not and cannot believe that the United States Constitution requires that their special county, of the 23 counties in Wyoming, must be singled out for extinction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Richard Barrett, the attorney for Niobrara County, Appellees-Intervenors herein, hereby certify that on this _____ day of December, 1982, I served copies of the foregoing APPELLEES-INTERVENORS' BRIEF ON THE MERITS on the parties hereto as follows:

1. On Appellants, by mailing copies in a duly addressed envelope, with postage prepaid, to SUE DAVIDSON, Attorney for Appellants, Urbigkit & Whitehead, 405 West 17th Street, Suite 300, P.O. Box 247, Cheyenne, WY 82001.

2. On Appelees-State Officials, by mailing copies in a duly addressed envelope, with postage prepaid to A.G. McCLINTOCK, Attorney General, State of Wyoming, Capitol Building, Cheyenne, WY 82002.

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Attorney for
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STATE OF WYOMING)
) ss.
COUNTY OF LARAMIE)

The foregoing Certificate of Service was acknowledged before me this _____ day of December, 1982, by RICHARD BARRETT.

Sharon L. Bailey
Notary Public

SHARON L. BAILEY NOTARY PUBLIC LARAMIE COUNTY, WYOMING

My Commission Expires:
August 7, 1985

{SHDKT } PROCEEDINGS AND ORDERS DATE: 032383

CASE NBR 82-1-00065 ATX CASE STATUS: GRANTED
SHORT TITLE Brown, Margaret R., et al. DOCKETED: Jul 13 1982
VERSUS Thomson, Sec. of St. of WY

Entry	Date	Note	Proceedings and Orders
1	Jul 13 1982	G	Statement as to jurisdiction filed.
3	Aug 2 1982		Order extending time to file response to jurisdictional statement until August 25, 1982.
4	Aug 19 1982		Motion of appellee James L. Thompson, et al to affirm filed.
5	Aug 25 1982		DISTRIBUTED. September 27, 1982
6	Aug 25 1982	X	Motion of appellee Thyra Thomson, et al. to affirm filed.
7	Oct 4 1982		PROBABLE JURISDICTION NOTED. **********
8	Nov 26 1982		Brief of appellant Margaret R. Brown, et al. filed.
10	Dec 3 1982		Order extending time to file brief of appellee on the merits until January 7, 1983.
11	Dec 13 1982		Joint appendix filed.
12	Jan 3 1983		Brief of appellees James L. Thompson, et al filed.
13	Jan 10 1983		Brief of appellee Thyra Thomson, et al. filed.
14	Jan 11 1983	G	Motion of Peter J. Mulvaney, Esquire, to permit Randall

CONTINUE {

{SHDKT } PROCEEDINGS AND ORDERS DATE: 032383

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Entry	Date	Note	Proceedings and Orders
14	Jan 11 1983	G	Motion of Peter J. Mulvaney, Esquire, to permit Randall T. Cox, Esquire, to present oral argument pro hac vice on behalf of appellees filed.
15	Jan 10 1983		Record filed.
16	Jan 10 1983		Certified original record on appeal, 5 volumes received.
17	Jan 17 1983		DISTRIBUTED. Jan. 21, 1982. (Motion of Peter J. Mulvaney to permit Randall T. Cox to present oral argument).
18	Jan 24 1983		Motion of Peter J. Mulvaney, Esquire, to permit Randall T. Cox, GRANTED.
20	Jan 25 1983		CIRCULATED.
21	Feb 15 1983		SET FOR ARGUMENT. Monday, March 21, 1983. (1st case)
22	Feb 28 1983	D	Motion of appellees James L. Thompson, et al. for divided argument filed.
23	Mar 7 1983		Motion of appellees James L. Thompson, et al. for divided argument DENIED.

CONTINUE {

PROCEEDINGS AND ORDERS DATE: 032383

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Entry	Date	Note	Proceedings and Orders
24	Mar 21 1983		ARGUED.